

# The Life of Joseph Rucker Lamar

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Clarinda Pendleton Lamar



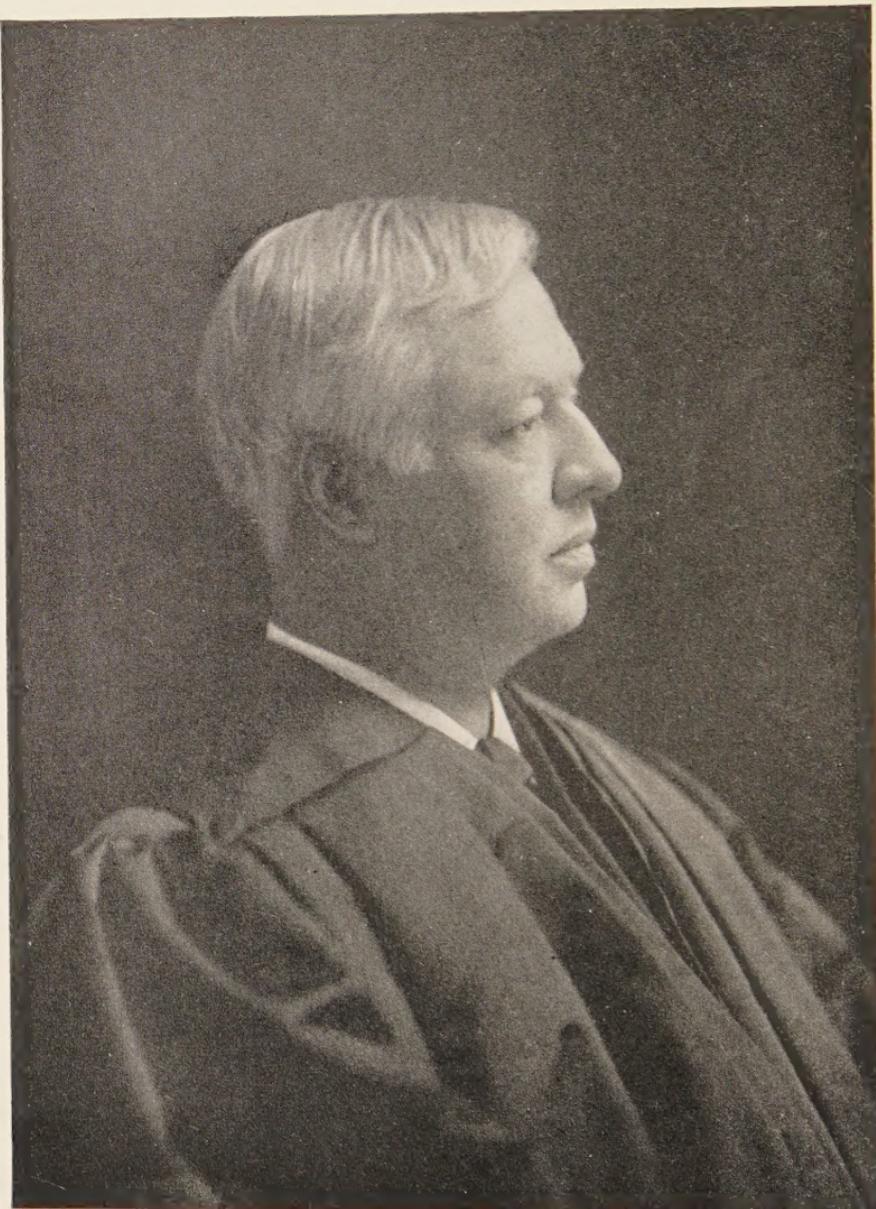
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THE LIFE OF

# JOSEPH RUCKER LAMAR

1857-1916

BY

## CLARINDA PENDLETON LAMAR

## ILLUSTRATED

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To  
PHILIP RUCKER LAMAR  
AND  
WILLIAM PENDLETON LAMAR



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# The Life of Joseph Rucker Lamar



# The Life of Joseph Rucker Lamar

## CHAPTER I

### THE WARP AND WOOF OF HEREDITY

IF we could only catch Nature at her loom and watch her select the material with which to weave our characters and determine our destinies, the biographer's task would be simpler. She has an abundance from which to choose, for generation after generation of our forefathers have furnished the threads for her distaff—threads so persistently enduring that time cannot weaken their fibre, nor many tears wash out their fadeless colors. First she chooses the long, straight lines of descent that are to furnish the background, the prevailing color of our natures; and crossing and recrossing these are other hereditary lines, throwing up new patterns on the surface and fresh combinations of old traits and idiosyncracies. Here the humors of some long forgotten ancestor lend a grave or a gay tone to our dispositions; and there the characteristics of some more recent grandparent come to light to make us a thorn in the flesh to those nearest us, or the beloved of all who know us.

It is fascinating to trace these hereditary threads.

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Whence do they originate? By what law do they lie dormant from generation to generation, only to crop out with startling unexpectedness, and dominate the character of some man or woman who may never have heard of the ancestor from whom he inherits them.

It is true that there are some apparent exceptions to any known or conjectured laws of heredity. There are distinguished men who spring from commonplace antecedents with an effect as strange and startling as the blooming of a splendid flower in a bed of weeds. But when we see the flower we are apt to say: There was once a garden in this neglected spot. And of such men we instinctively believe that if we could trace their ancestry back far enough we would find some man or woman with more than ordinary gifts.

When we would study the hall marks of any American family, we must begin somewhere, taking our characters as we find them, at our beginning and ignoring any previous history. In America, it is almost customary to begin with the first emigrant to this country, and if he came of his own free will in colonial times, of two things we may be sure: he was neither coward nor idler. The dangers braved in crossing the uncharted ocean in any of the frail ships which brought the first settlers to these shores and the hard conditions faced after landing, forbid either of these traits. He was, of necessity, a pioneer, an adventurer. He followed some urge, some discontent which would not let

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him rather bear the ills he had than fly to others that he knew not of.

For some such reason, unknown to us, Thomas Lamar, with whom we make our beginning, together with his brother Peter, left France about the middle of the seventeenth century. He may have fled from religious persecution, although it was many years before the Revocation of the Edict of Nantes was to deprive France of many of her most valuable citizens. The two went first to England. And it was not poverty which induced Thomas to leave that attractive island, for in his will, which was probated in Maryland in 1714, Thomas bequeathed all his "lands and moveable estate, both here and in England" to his widow.

Not satisfied to remain in England, for all that he seems to have prospered there, Thomas Lamar sailed for America with his brother, and landed in Virginia. How long they stayed there we do not know. Not long enough to be naturalized, however, for on November seventeenth, 1663, they were granted a certificate of *dennozacōn* by Lord Baltimore, which reads:

"Whereas Thomas and Peter Lamore,<sup>1</sup> late of Virginia, and subjects of the crown of France, hav-

<sup>1</sup> In the wills and the family letters which have come down to us the name is written Lamar. But in the deeds and land grants which were drawn by the county clerks, it is spelled Lamaire, Lemar, Lemarre, Le Marr, De la Maire; depending, like the spelling of Sam Weller's name, "on the taste and fancy of the speller."

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ing transported themselves into this province here to abide, have besought us to grant them, the said Thomas and Peter Lamore, leave here to inhabit as free denizens, and freedom land to them and their heirs to purchase, Know ye, that we, willing to give encouragement to the subjects of that crown, do hereby declare them, the said Thomas and Peter Lamore, to be free denizens of this our province of Maryland. . . .”<sup>1</sup>

Two years later, on November twenty-fourth, 1665, we find Thomas Lamar petitioning for a grant of land, “so much as will enable him to transport himself and his wife, Mary, into the province of Maryland.” The petition was granted on the same day,<sup>2</sup> and thereafter there are, in the records of that part of Calvert County which subsequently became a part of Prince George County, many deeds and land grants to Thomas and Peter Lamar.

The deed to one of these plantations is a quaint old instrument<sup>3</sup> which reads:

“Charles Absolute Lord and Proprietary of the province of Maryland and Avalon Lord Baron of Baltimore &c.

“ To all persons to whom these presents shall come Greeting in our Lord God Everlasting.

<sup>1</sup> Land Records, Annapolis, Md. vol. xx, fol. 95.

<sup>2</sup> Land Records, Annapolis, Md., vol. ix, fol. 312.

<sup>3</sup> Land Office of Maryland, Liber No. 19, folio 481.

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“Know ye that we for and in consideration that Thomas La Mare of Calvert County in our said province of Maryland hath due unto him fifty acres of land within our Province . . . upon such conditions and terms as are expressed in the Conditions of Plantation of our late father Cecelius of noble memory under his greater seal at Arms bearing date at London the second day of July in the year of our Lord 1649 . . .

“Do hereby grant unto him the said Thomas La Mare all that parcel of land called *The Fishing Place* situate lying and being in Calvert County on the West side of Patuxent River and the North side of Trent Creek. . . . To have and to hold the same unto him the said Thomas La Mare, his heirs and assigns forever—to be holden of us and our heirs as of our Manor of Calverton in free and common soccage by fealty only for all manner of services. Yielding and paying therefor yearly unto us and our heirs at our receipt at our city of St. Marie’s at the two most usual feasts of the year vitz: at the feast of the Annunciation of the Blessed Virgin Mary and at the feast of St. Michael the Arch Angel by even and equal portions the Rent of two Shillings Sterling in Silver or Gold.

“Given at our city of St. Marie’s under the great seal of our said Province of Maryland the fifth day of April in the second year of our dominion over our said Province Annoqe Dom<sup>m</sup> One Thousand Six hundred seventy seven.”

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Thomas Lamar's eldest son was also named Thomas. He owned many plantations whose picturesque names appear and reappear in the deeds and wills of his descendants. *Two Brothers*, *Valentines Garden*, *Conclusion*, *Joseph and James* and *The Pines* are among them. He married Martha Urquhart, said to have been a sister of the Reverend John Urquhart, "Erector of Al-faith Parish in Saint Mary's County."<sup>1</sup> Thomas Lamar makes her Executrix of his will, dated May eleventh, 1747, and probated January thirty-first, 1749, "in the presence of Robert Lamar, Heir at law."

This Robert Lamar was the eldest son of Thomas and Martha (Urquhart) Lamar, and had acquired large tracts of land before his father's death, in 1749. The names of these tracts are suggestive of bits of family history. *Wilson's Delay* was bought from his brother-in-law, Joseph Wilson. Its name seems to reflect upon Wilson's business methods. *Robert's Delight*, *Mill's Invention* and *Hunting Hill* make us wonder from what events they took their names.

But two generations was a long time for the descendants of Thomas Lamar, the emigrant, to remain in one place; so on January twenty-fifth, 1755, we find Robert Lamar disposing of his lands to his uncle, the Reverend John Urquhart, and moving, with his sister, Mrs. Clementius Davis, and three of his brothers—Thomas, John and Sam-

<sup>1</sup> Cf. deed of Robert Lamar to the Rev. John Urquhart, Land Records of Frederick County, Md., Liber E. folio 639, 640, 641.

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uel—to South Carolina. They settled at Beech Island, on the Savannah River, opposite the city of Augusta, where some of their descendants still live. Joseph Rucker Lamar, the subject of this sketch, was descended from Robert Lamar. His distinguished cousin, L. Q. C. Lamar, who was appointed to the Supreme Court of the United States by President Cleveland, was a descendant of Robert Lamar's younger brother, John.

Robert Lamar married Sarah Wilson, a sister of Joseph Wilson from whom he had bought *Wilson's Delay*. She accompanied her husband to South Carolina, and with them went their four sons. One of them, Philip Lamar, married his cousin Ruth Davis. The files of the *Augusta Chronicle* and the *Charleston Courier*, for that year, show that Philip and Ruth (Davis) Lamar both died on September thirteenth, 1807, of one of the malignant fevers to which that region was then subject. One of their sons, also named Philip, was only fifteen years old when his parents died. He assumed the care of the plantation, with the advice and assistance of his uncles, and made a remarkable success of it. He married Margaret Anthony, a daughter of Lewis and Elizabeth Anthony, and a sister of the Reverend Samuel Anthony who was a minister in the Methodist Episcopal Church. That he was a man of character and power is shown by the fact that he was "appointed, by his Conference, at one time and another, to all the best places in the State, and in

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these he not only sustained himself but secured the respect and love of his people and of the outside public."

Philip Lamar was a well educated man. In addition to being a successful planter, like his fathers before him, he was a mathematician, a skillful surveyor, and the friend and adviser of his neighbors. He, too, followed the family habit and moved still farther West. He set out with his family in 1828 or '29 and got as far as Gwinnett County, Georgia, where he made his home temporarily, and where, on May nineteenth, 1829, his son, James S. Lamar was born. When the baby was six months old, the family again took up their wandering and finally located near the city of Columbus, Georgia; then a small but growing town on the Chattahoochee River. Here, Philip Lamar bought a large tract of land, and here his son, James Lamar, the father of Joseph Rucker Lamar, grew to manhood. The boy James attended an "Old Field School," where the babble of the scholar's voices, all studying their lessons "out loud," was punctured by the shriller cries of the pupils who were being flogged for failure in recitation or for some misdemeanor. Fortunately for Lamar and for the other pupils, there came into the neighborhood, soon after, a Mr. Charles H. La Hatte, college graduate and professional teacher. A warm affection sprang up between the master and his pupil; and when La Hatte went away to teach elsewhere, Lamar followed him; boarded

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in the same house with him, and took up more advanced studies under his direction.

After leaving La Hatte, Lamar studied law, and was admitted to the Bar in 1850. But he did not practice his profession, for at that time a great wave of religious enthusiasm swept over the country, and he early fell under the compelling influence of Alexander Campbell.<sup>1</sup> Among Campbell's many converts in Georgia was Mrs. Richard Tubman, of Augusta; a woman of strong intellect and great force of character, who was possessed of great wealth and was distinguished for her public spirit and her many philanthropies. Her attention was drawn to the young law student, James Lamar, and to his deepening interest in religion. It was upon her advice that he decided to enter the ministry, and to abandon any hope of worldly advancement which the legal profession held out for him. With her financial assistance, he attended the college which Mr. Campbell had founded at Bethany, Virginia (now West Virginia), to study under Mr. Campbell's direction. Upon his graduation, in 1854, Lamar was called by the Church of the Disciples in Augusta to be its Pastor. His connection with this Church, first as Pastor and later as Pastor Emeritus, lasted for the rest of his

<sup>1</sup> Cf. Richardson's *Memoirs of Alexander Campbell* (Cincinnati, 1888) Grafton's *Alexander Campbell, Leader of the Great Reformation of the Nineteenth Century* (St. Louis, 1897).

*Domestic Manners of the Americans*, Mrs. Trollope (New Edition, Dodd, Mead and Co., 1901).

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life, save for a brief period when he was Pastor of the Church of the Disciples in Louisville, Kentucky.

James Lamar was the author of several books, theological and exegetical works; among them *The Organon of Scripture*, in which he applied, in a novel and interesting way, the Baconian method of induction to the study of the Bible. He was master of a pure and limpid English, lightened by a strain of humor; both of which traits re-appeared in his son, Joseph Lamar; but with this curious difference: in the father the humor was never more evident than in his writings; it bubbled up, irrepressibly, in the midst of the dryest themes; while in the son, it was seldom apparent in what he wrote, though rarely absent from his conversation.

Mrs. Corra Harris, the Georgia novelist, who knew James Lamar in his old age, refers to him in one of her novels. "He was the father of a man," she wrote, "who has recently become one of the Justices of the United States Supreme Court. But to have known him at this time, one would have been more likely to suppose that he would become the father of a great poet or a great saint. God has a curious way of choosing the material for national characters. They do not grow as often as they might be expected to, upon the hilltops of publicity. They rise, mysteriously gifted from charming obscurity."

Surely here are threads enough, and to spare, to account for all of the qualities which we find in

the subject of this sketch. The family pattern took on new characteristics with each generation; new and striking traits which appeared in different members of the family. One was not surprised to find them displaying a talent for the law. It was expected that some of them would be book worms, with a scholar's absent mindedness and full of quaint humor. They were retiring men, as a rule, rather than self assertive; but with a sense of personal dignity and a tenacity of opinion, once their convictions were roused, upon which no amount of opposition made the slightest impression. Original men; not very good at working in harness; but each going his own serene way with as little inconvenience to others as possible. They were simple and unostentatious in habit and manner; punctilious in all questions of ethics; kindly and courteous, generous and open handed toward friend or foe, and sometimes possessed of unusual social gifts and a genius for making friends. These were hereditary threads, appearing in different generations of the family; not all of them often in one individual, though one or two of the name seemed to have inherited them all. They were successful planters, merchants, editors, soldiers, lawyers, judges, statesmen. Some of them attained unusual distinction. One of them fought with Taylor at Monterey and was elected President of the Republic of Texas. The most distinguished member of the family is described by Henry Adams in the following words:

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“Some twenty years later, in the shifting search for the education which he never found, Adams became closely intimate at Washington with Lamar, then Senator from Mississippi, who had grown to be one of the calmest, most reasonable and most amiable Union men in the United States, and quite unusual in social charm. . . . Above all his Southern eccentricities he had tact and humor, . . . he would have done better in London (than in Russia, where he was sent to represent the Confederacy). London society would have delighted in him, his stories would have won success; his manners would have made him loved; his oratory would have swept every audience; even Moncton Milnes could never have resisted the temptation of having him to breakfast between Lord Shaftesbury and the Bishop of Oxford.”

But Nature is lavish with her materials and there are still other sources from which she drew the threads with which to weave the character we wish to describe.

On his mother’s side, Joseph Lamar belonged to the Rucker family of Virginia and Georgia. There was a Ruckersville in Orange County, Virginia, before 1732,<sup>1</sup> but we do not know the date on which the first Rucker arrived in America. He

<sup>1</sup> Meade, Bishop. *Old Churches and Families of Virginia.* (Lippincott, Philadelphia, 1876.)

Slaughter, Rev. Philip. *A History of St. Mark’s Parish, Culpeper County, Virginia.* Slaughter (pub.), Baltimore, 1877.

was named Ambrose, and there is a tradition in widely separated branches of the family, that his ship was wrecked off the coast of Virginia and that being a man of great size and strength, he swam ashore. Ambrose Rucker settled in Virginia and his son, Peter Rucker, moved to Essex County, out of which three counties—Spotsylvania, Orange and Culpeper were successively formed. In his will, which is dated January eighteenth, 1742, Peter Rucker speaks of himself as “of St. Mark’s Parish, in the County of Orange, planter,” and leaves his property to his wife, Elizabeth, for life. He mentions three daughters and four sons, among them Thomas Rucker, who was a grown man and possessed of numerous tracts of land at the time of his father’s death. The deed to one purchase illustrates the quaint phraseology of an ancient method of conveying title, known as “Lease and Release.” It states that:

“THIS INDENTURE made the 23 day of May in ye twelft year of ye Reign of our Sovereign Lord George the second by the Grace of God of Great Brittain France and Ireland King Defender of ye Faith &c. Anno Domeni 1739 Between John Rucker of the County of Orange of ye one part, and Thos. Rucker of the County and Parish afores<sup>d</sup> of the other part; Witnesseth, that the said John Rucker for and in consideration of the sum of five Shillings . . . hath bargained and sold . . . unto ye said Thos. Rucker all that Tract or Parcel

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of Land containing five hundred and ninety Acres be ye same more or less . . . on the North side of the Rappadan River and on Maple Run in the said County of Orange . . . TO HAVE AND TO HOLD the s<sup>d</sup> Land . . . unto the said Thomas Rucker his heirs Ex<sup>rs</sup> Ad<sup>rs</sup> & Assigns from ye day after the date hereof for and during one whole Year . . . Yielding and paying therefor Yearly the Rent of one pepper Corn at ye feast of Saint Michael ye Arch Angel."

The idea behind this complicated procedure seemed to be that if Thomas Rucker was in the actual possession of the land he would be "ye better enabled" to complete the purchase and to take the title in fee simple. On the next day, accordingly, in consideration of £50, John Rucker "granted, aliened, released and confirmed unto ye said Thomas Rucker" the five hundred and ninety-nine acres "now in ye tenure or occupation of ye said Thomas," and warranted and forever defended the title to the land.

Thomas Rucker's will was executed on June eleventh, 1763. He describes himself as of "Bromfield Parish, in the County of Culpeper," and mentions his wife Elizabeth and twelve children. To his son Cornelius, he had given, four years earlier, a part of what he calls in his will, his *Manor Plantation*.

Cornelius Rucker, dying before his father, left a will dated March twenty-eighth, 1761. He re-

fers to himself as "Cornelius Rucker of the Parish of Bromfield and County of Culpeper, being of sound mind and memory, but very sick." His youngest son John, moved across the County line into Orange County, where he married Elizabeth Tinsley, a beautiful woman of great intelligence and strength of character. It is recorded that, in obedience to the law at that time in force in Virginia, her parents, John and Sarah Tinsley consented to her marriage with John Rucker on April twenty-fifth, 1780.

We have no authentic record of the life of the young couple while they remained in Virginia. But in 1784, the General Assembly of Georgia set apart two hundred thousand acres of land in Wilkes County to be settled by Virginians, and in the last quarter of the eighteenth Century many Virginians were moving to Georgia. When one remembers the numerous children mentioned in the Rucker wills, one is not surprised to learn that the State of Virginia became a little over crowded with Ruckers, and that, in 1785, Pressley, Willis and William Rucker came from Virginia to Georgia and located in what are now Elbert and Hart Counties. They sent back a good report as to soil and climate, and early in 1786, John Rucker, fourth in descent from Ambrose, came with his wife, Elizabeth Tinsley, from Ruckersville, Virginia, to a neighborhood in Elbert County, which soon became known as Ruckersville, Georgia. He settled on a tract of land

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still owned by his descendants. "And there, on the fifth day of January, 1788, his son Joseph was born, and there he spent the seventy-six years of his life, and there, on the twenty-seventh day of August 1864, he died." This Joseph Rucker was the grandfather of Joseph Rucker Lamar.

It appears from these records that Ambrose Rucker and each of his descendants in Joseph Rucker's direct line—Peter, Thomas, Cornelius and John,—left a will and numerous children and a widow, who was usually named Elizabeth. They all seem to have busied themselves in accumulating land. But to account for the character of Joseph Lamar's grandfather, they must have accumulated other things as well.

Joseph Rucker, of Ruckersville, was a remarkable man. He acquired such education as the time and place permitted, and supplemented it by great, natural endowments and keen powers of observation. His father died when he was a youth, and upon him fell the duty of caring for his mother and sisters. He married Margaret Speer, daughter of William Speer, a prominent citizen of Abbeville District, South Carolina, who was then living on a tract of land granted to him by Congress for his services in the Revolutionary war. He was Scotch-Irish, in descent, a son of William and Margaret (Houston) Speer and was born, in 1747, near Strabane, County Tyrone, Ireland. His mother died at his birth, and he was reared by his maternal grandfather, William

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Houston. In 1772, William Speer came to America, landing at Christian Bridge on the Delaware River. He moved to South Carolina, where he had a distinguished career in the Revolution. To the day of his death he wore the scars of injuries received when he was captured by the British under Sir Peter Parker. He was on General Pickens' staff; took part in the siege of Ninety-six; the Battle of Cowpens and the engagement at Kettle Creek, Georgia. He was present at the siege of Augusta, when it was surrendered to the American army.

Margaret Speer is described as a woman of beautiful spirit, tender and benevolent, and, with it all, possessed of remarkable common sense. It was not the least of Joseph Rucker's achievements that he married such a woman.

The house in which Joseph and Margaret Rucker lived was originally a square, frame structure which grew with the growth of the family, and ultimately attained considerable size and dignity. Its distinguishing features were two forward projecting wings connected by four tall columns, which gave it an appearance not unlike that of *The Hermitage*, the home of Andrew Jackson, near Nashville, Tennessee. It was approached through a long avenue of cedars, lined with boxwood. The house has fallen into decay, and the supposed picture of it on the cover of Mrs. Harris' novel, *The Recording Angel*, is not accurate. But the avenue of tall cedars, from which the place took

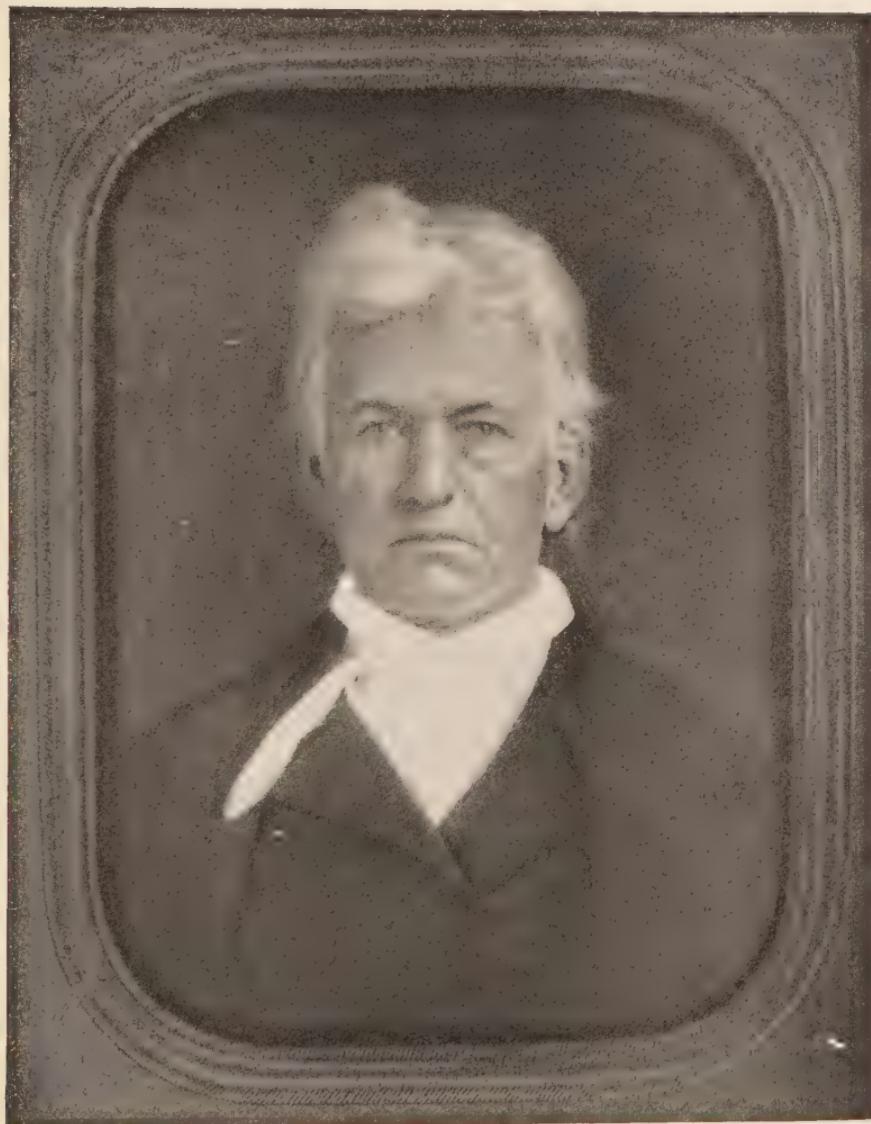
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its name *Cedar Grove* is still standing with its heavy lining of boxwood, now grown to great size.

James Lamar wrote for his son, Joseph Rucker Lamar, the following description of Joseph Rucker and the life at *Cedar Grove*:

“He was always called Squire Rucker. I well remember the first time I saw him. It was in the summer of 1855, when the whole party of us from Farm Hill had gone over to Ruckersville; Miss Mary, Miss Georgia and myself in one carriage, and Mr. and Mrs. Tinsley W. and the younger children, in another.<sup>1</sup> We arrived about sunset and were shown into the parlor. After a little while the old gentleman came in and I was introduced. He was dressed in broadcloth, the trousers made in the old fashioned way with a flap in front buttoned on either side; a watch chain with heavy seals, hanging from the fob; a vest, also of cloth, and a coat of the same material in the style called ‘shad-belly’—somewhat like the evening coats of the present day. He wore it unbuttoned. His neckcloth was then, and always, pure white. It was not a simple tie, but a sort of folded handker-

<sup>1</sup> Joseph Rucker's eldest son, Tinsley W. Rucker, was married and lived at “Farm Hill,” near Ruckersville. His daughter, Georgia, and Joseph Rucker's youngest child, Mary, were about the same age, and spent much of their time together at both plantations. They are the “Miss Mary and Miss Georgia,” mentioned above.



Hollinger & Co.

**SQUIRE RUCKER OF RUCKERSVILLE**



chief put on by laying the middle part against the throat, leading the ends back and crossing them, then bringing them to the throat to be tied together. . . .

"I was there on 'special business,' and had therefore gone with considerable trepidation. I think the old gentleman understood my 'business' and he seemed to be especially careful not to make it easy for me. He was polite, but very reserved. He seemed to be studying me. His conversation, so far as it was directed to me, was mainly questions—chiefly about men and women and things in Augusta—Mrs. Tubman, the Claytons, Gardiners, Thomases, Metcalfs, the Cummings—then about cotton and business and prospects; but no human being could have told from any expression of his face what effect my answers had upon him, or what inference as to me, he drew from them. Considering the time of the year I must say it was a little chilly. Presently supper came on—the conversation took a somewhat wider range.

"The family were book people—Dickens was the rage then and I was familiar with Dickens and Thackeray, and had dipped into Cousin and various philosophers; and at that period of my life I could talk—an art which I have unfortunately lost. So when the old gentleman found that I could hold my own with Elbert and the others, and that all the family treated me with respect and consideration, he seemed to thaw, little by little, concluding, I suppose, that I might turn out

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to be something in my way if I was nothing in his.

“Along with his [Joseph Rucker’s] growing success and the steady enlargement of his landed possessions and the multiplication of his slaves, there was developed another quality which he possessed in an eminent degree, that of governing, directing and managing. The *ante bellum* plantation—especially when, as in his case, one man owned a dozen large plantations—required the best qualities of a military General, as well as agricultural and business sense. He possessed these qualities in a high degree. . . . Every plantation was complete in itself, having its own farm implements and mules, its gin house, smoke house and corn houses—its herd of cattle, its flock of sheep, its colts and its hogs—all of which were kept in his mind as perfectly as if he had before him a written list. . . .

“As a matter of course, leading a life both prudent and frugal, and directing with consummate skill so large a business, his income had been for many years very large, and he had accumulated a great surplus of money. In the management of this he displayed remarkable financial ability.

“In lending his money he would, of course, sometimes be deceived by misrepresentations, or the debtor would have misfortunes and so losses would be incurred; but these cases were rare. I suppose there never was a money lender who was so highly esteemed by his debtors. They recognized what

was the truth, that he let them have the money as an act of friendship, and that he might really help them along. . . . Thus, in a few years, he came to have large amounts of money out at interest. Every year he would go to Augusta where he was well known and esteemed by financiers and business men, and after carefully informing himself, would invest some thousands in bonds and stocks.

“He was a grand man—a man who under different circumstances could have commanded fleets and armies, or managed the finances of a nation. I feel that I have very inadequately presented him. My recollections of him do not come to me in sequence, nor am I able to recall separate incidents and events. These have all faded from my mind, but they have left with me a distinct and ineffaceable vision of the man. I see him now—see him as plainly as I did thirty-five or forty years ago. I see a portly, well formed, dignified old gentleman, with hair rather long, somewhat carelessly brushed and parted, and as white as snow. He has on now as always a pair of gold spectacles. He has a strong jaw, wide mouth, firm lips, and when he talks or laughs, his teeth are seen to be regular, well-set, and rather short. As he walks along leisurely—for he never seemed in a hurry—dressed as before described, with a silk hat, neither new and shiny, nor old and shabby, any one seeing him for the first time would recognize him at once as a man of weight, of character and of influence.

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—Again I see him about four o'clock in the afternoon, his nap over, for this was as regular as his dinner, passing out of the yard by the side gate toward a little darkey who is holding his horse which is hitched to a rather shabby old buggy. Little Joseph R.,<sup>1</sup> the light of his eyes, is toddling along by his side. The old gentleman reaches the buggy and climbs in rather clumsily, for his active days are over now; the little darkey is remanded to the rear where he perches on next to nothing, and hangs on somehow. Little Joseph R. is lifted up between Grandfather's knees, where he seizes the reins and after a good deal of clucking and jerking induces the horse to start in a slow walk, Joe chattering and asking a hundred questions, the old gentleman smiling and happy and the little nigger grinning and clutching hold of something for dear life. Before they return, Joe will wade and splash in Van's Creek; Grandfather will look on with admiration for a while, and then leave him while he walks down the creek to look at the magnificent Harper's Bottom corn—the aforesaid darkey sitting in the buggy like a statue and holding the horse. A little after sunset they will return overflowing with important adventures, and reports of rabbits jumped, and lambs and little calves seen—for they have returned by the way of the pasture. . . .

“But enough. Though I cannot portray him in

<sup>1</sup> This was Joseph Rucker Lamar, the subject of this biography. He was born at *Cedar Grove* and was named for his grandfather.

the thousand scenes in which he lived and acted before me, it is a satisfaction to recall him vividly before the eye of my mind. I was deeply indebted to him, I was sincerely and warmly attached to him, and to the extent of my ability I heartily appreciated his sterling character and his wonderful capacities and powers. He was one of the finest products of a society and civilization that have passed away."

One of Joseph Rucker's granddaughters tells of the evening meal at *Cedar Grove* which was served, in summer, in the yard under a large oak tree; the candles protected from the breeze by tall "hurricane glasses." Another relative, who knew Joseph Rucker well, wrote of him to Joseph Lamar:

"Your Grandfather always respected the marriage relation. Old Uncle Wace, a Virginia product, married all the couples at the various places. I can see the old negro now in the gig he was furnished, a good pony between the shafts; specs on his nose, his high hat on his head—dignity? Yes, naught but dignity and respect and good will from all. His Bible always accompanied him. . . . Joseph Rucker hesitated to lend money to a man with a glib tongue or who wrote with a flourish. He said that one who wrote painfully was much more apt to pay."

Still another correspondent, a neighbor and friend of Squire Rucker, said of him:

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"My admiration for your grandfather is a part of my heritage from my father. When I grew up at home his name was law and almost Gospel there. . . .

"You ask me to write of his character. I can't do that. I am like a child when first taken to Niagara. I am, even after thirty years of experience in life and absence from his association, dazed when I begin to particularize his life and character. I will say this much generally. He copied after no man on earth. He reflected no borrowed light. What he was he was of himself.

. . . "He was not a voluble talker. In fact he cultivated listening. . . . All the gifts of speech that your family evinces, came through your great-grandfather, who was a Speer. The Speers, as you know, are greatly gifted, but in an antipodal line to the Ruckers. Your uncle Elbert's fine talk, Tinney's versatile mind and acquisitions, your mother's love for universal knowledge and learning all come from that side of the family and are greatly to be admired. . . . A few of his [Joseph Rucker's] descendants combine, more or less, the traits of the two families, but it is not general. Your uncle Tinsley, his son Jeptha and your mother, were and are the most notable instances I remember; but the feeble physical life of two of these swept them off prematurely. . . .

"After thirty years of experience of life, I am of the conviction that Joseph Rucker had the biggest and best balanced mind I ever knew."

## The Warp and Woof of Heredity 27

It is noteworthy that General Toombs, who was a frequent visitor at *Cedar Grove*, confirmed this judgment. He said that "Joseph Rucker had the best mind he ever met."

Mary Rucker was the youngest child of Joseph and Margaret (Speer) Rucker. She was born at *Cedar Grove* on August twenty-third, 1833. She married James S. Lamar, of Augusta, on June nineteenth, 1856. But save for a few years in Augusta, her entire life was passed at *Cedar Grove*, where her eldest son, Joseph Rucker Lamar, was born, on October fourteenth, 1857. His brother Phil and his sister Mary were born in Augusta.

One is tempted to linger over the annals of those early days; not alone for the sake of the picture they give us of a civilization that has passed away, but because Joseph Lamar's features appear on every page. Take, for example, a story told of his grandfather which adds a very human touch to the picture we have of him. "Mr. Rucker," said his wife, "that hen I set on sixteen eggs; guess how many chickens she hatched?"

"Seventeen!" was the prompt reply. Which is just the answer that his grandson Joe Lamar, would have made to a similar question from his wife.

The general disaster which marked the close of the Civil War obliterated the old life at *Cedar Grove*. Mary Rucker Lamar died at Augusta, on January twenty-seventh, 1864. The old Squire, already failing, was soon gone; his wife followed

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him nine days later, and a noble chapter in the life of the old house was forever closed.

After Mary Rucker Lamar's death, her little family was scattered, fleeing before the advance of Sherman's army, which threatened Augusta. The daughter was sent to the home of a relative. James Lamar moved, with his two boys, Joe and Phil, to a distant plantation—the Burch Place—where they remained until the close of the war. In later years Judge Lamar, who was not quite seven years old when his mother died, remembered something of their life as refugees on this plantation, which was a part of his mother's estate. He described his father's attempt to make Christmas for them when the blockade made the purchase of new toys an impossibility. Some yarn socks were unraveled, and the yarn made into a ball. Other makeshifts were attempted; makeshifts which sound amazing to us now when we consider the evidences of plenty with which the family was surrounded—the large and fertile plantation and the retinue of servants. He remembered also how his father assembled the slaves to read the Emancipation Proclamation to them, and to explain that they were free. He did not recall that any of them went away, and the life on the plantation continued with little apparent change.

One cannot read this story without a poignant sting of pity for the young mother and the tender beginnings of her home and family; uprooted, scattered; as though a devastating storm had swept

over a garden destroying its young growth. Such tragedies seldom happen in a country which is at peace. This one was aggravated, if it was not caused, by a country at the death struggle of a bloody war, and it must have profoundly affected the children, turned adrift at a very impressionable age.

In the closing days of 1865, James Lamar married again and with his family, returned to Augusta. His second wife, Sarah May Ford, was a daughter of Dr. Lewis Ford, the "beloved physician" of Augusta, whose family was related to the Ford family of Morristown, New Jersey. Georgia Rucker, mentioned in James Lamar's narrative, married a son of Dr. Ford, and the three families, Lamars, Ruckers and Fords—were intimate.

Of Joseph Lamar's own mother we know that she was gentle, affectionate, an accomplished musician, and something of a scholar. In addition to her schooling which was the best that the time and the place afforded, she had the benefit of a tutor; a German who taught music and languages to the daughters at *Cedar Grove* and *Farm Hill*. Few traces now remain of her rich young life—a poorly painted portrait; an exquisite old piano, decorated with much gilding, after the fashion of the times; a few books, among them a beautiful copy of *Picciola*, the gift of her brother Elbert; an embroidered crêpe shawl; a little silver and jewelry. Strange that there should be no more tangible

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reminders of a woman so beautiful, and beloved! But her life had been lived in her father's house. She had no home of her own, save for a few years in Augusta, and no history apart from those who loved her. She was one of those "swept off prematurely;" yet her memory still haunts the site of the old house. We know but little of her, but we have only to close our eyes to see her plainly, across the years, as she walks with her mother and the old Squire down the long avenue at *Cedar Grove*.

## CHAPTER II

### SCHOOL DAYS

WHEN the two Lamar brothers, Joe and Phil, returned to Augusta in 1866, they doubtless attended some primary school, but we do not know who was their teacher. The first master of whom we have any definite information was Professor Joseph T. Derry, who, in the Sixties, taught a private school in Augusta. If we are to judge of the tree by its fruits, Professor Derry must have been gifted in his profession, for, in 1919, he wrote to the *Atlanta Journal* giving a list of his pupils at the time when Joe and Phil Lamar attended his school. The list read:

“Woodrow Wilson, President of the United States; Joseph R. Lamar, at the time of his death Associate Justice of the Supreme Court, and his brother Philip, an able young man cut off in early manhood; Thomas Gibson, United States Consul at Beirut, Syria, where he died; William Keener, who became Dean of the Law School of Columbia University, New York; Dr. William T. Doughty, Jr., Dean of the Medical College at Augusta, Georgia; William H. Fleming, ex-Congressman from Georgia; Pleasant A. Stovall, United States

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Minister to Switzerland and Philip F. Gamble, one of Georgia's most successful farmers."

Woodrow Wilson and Joe Lamar were schoolmates and playmates in Augusta. Dr. Joseph Wilson, Woodrow Wilson's father, was pastor of the leading Presbyterian Church in that city, and Joe Lamar's father of the First Christian Church. The two parsonages stood side by side, their back yards separated by a high fence, which, however, was no barrier to social intercourse. Here the two boys met and exchanged boyish confidences. They attended Professor Derry's school, they played on the Lightfoot Base Ball Club, and organized a debating society which met in the attic of one of the two houses.

But, in 1870, the Wilsons moved to Columbia, South Carolina, and the two Lamar boys were sent to a school in a country village. Woodrow Wilson and Joe Lamar went their several ways and did not see each other again until forty-three years later, when in 1913, they met in Washington, the elder lad President of the United States and the younger a Justice of the Supreme Court.

The Martin Institute, in the town of Jefferson in Jackson County, Georgia, to which the Lamar boys were sent, was kept by Professor John T. Glenn, one of the successful schoolmasters of his day, and was attended by scholars who later rose to prominence in the State. Their first month at the school was a trying experience for the two city

bred youngsters. They were miserably homesick. In speaking of it, in later years, Judge Lamar said that he was able to endure his own wretchedness only because Phil was so much more miserable that he had to forget himself in order to comfort the younger boy. But in time they got over their homesickness, and thrived in their new surroundings; for it was just the discipline they needed. The Martin Institute was a good school with a fine class of students, and the two boys, thrown on their own resources, soon learned to take care of themselves, and benefited by the physical and mental training that only a country village can supply.

At the end of the school year, the two brothers returned to Augusta and entered the Richmond Academy. And here they were treading upon historic ground; for the Academy is the oldest educational institution in Georgia and one of the oldest in the South. In 1783, when its original charter was granted, its Board of Trustees had exercised most unusual powers. In later years, Mr. Lamar became a member of the Board, and, among the many papers which he wrote concerning the early history of the city and the state, there is one called:

“Trustees of Richmond Academy, Augusta, Georgia; Their Work During the Eighteenth Century, in the Management of a School, a Town and a Church.”<sup>1</sup>

He gathered his material from the ancient

<sup>1</sup> Trustees of Richmond Academy. Lamar, Joseph R., 1910.

minutes of the Board of Trustees and from the early files of the *Augusta Chronicle*. In the course of its history the Academy was the scene of a notable event which Mr. Lamar describes:

“A year after the school had been moved to lot number nine, George Washington visited the city and during one evening of his stay (May 19, 1791) ‘attended the ball in the large room at the Academy at which was the largest number of Ladies ever collected at this place.’ On the next day ‘the President attended a public examination of the students at the Academy and was pleased to express himself handsomely of their performance.’

“On this occasion Edmond Bacon (the Ned Brace of *Georgia Scenes*) recited a poem. . . . the comment of the *Chronicle* . . . may be copied here as it is said to be the first literary production published in the town: ‘When the President of the United States of America honored with his presence the Examination of the students of Richmond Academy the following address was delivered by Master Edmond Bacon with such distinctness of articulation, such propriety of pauses and emphasis and in a manner so truly pathetic as to keep that illustrious hero and a numerous collection of guests in tears almost all the time the little orator was speaking.’ (Supplement to *Augusta Chronicle*, June 4, 1791).”

The verses are not bad and one does not see why the audience wept.

We do not know what the boy, Joe Lamar, learned at the various schools that he attended, but there was one thing which he had inherited from the grandfather who "copied after no man on earth;" and that was to do his own thinking. An illuminating story is told of his early school days. His father was not mistaken when he wrote of him, "Joe thinks for himself."

His teacher, in this instance, without making clear to him the mysterious and unsuspected powers of the minus sign, told him to subtract four from two. Joe replied that it couldn't be done. The schoolmaster, having, apparently no sense of humor nor any insight into the workings of a boy's mind, treated his attitude as one of insubordination and tried to browbeat him into acquiescence. But Joe stood his ground, and when his teacher threatened to report him for disobedience, he gathered up his books and left the school. His father listened to him with sympathy and understanding. Though he explained the use of the minus sign, he did not require him to return to a teacher so lacking in imagination. Joe accepted the explanation, however, with certain mental reservations.

The last preparatory school that he attended was Penn Lucy, a boarding school near Baltimore, taught by Colonel Richard Malcolm Johnston, the author of many characteristic tales of life in Mid-

dle Georgia: *The Goosepond School, The Early Majority of Mr. Thomas Watts*, and of others equally descriptive of the place and the people.

While he was with Colonel Johnston, Lamar and other Penn Lucy boys were taken to Washington to see Alexander H. Stephens, the former Vice-President of the Confederacy, who was then a representative in Congress from the Augusta District. When they entered his room the boys saw a small, emaciated figure, propped up in bed with pillows and surrounded with discomforts that would have scandalized a trained nurse of the present day. His conversation, in the thin, high voice that commanded attention wherever it was heard, was interrupted by fits of coughing distressing to hear. But he not only knew the names of his visitors, but was acquainted with their fathers and could recall the occasions when he had last met them. His guests came from Georgia, his own dear State; and from that part of it so familiar to Stephens where the stiff red clay alternates with a thin, sandy soil. Before they left him, he told them there was something he had to say to them; something that he hoped they would always remember.

“Now listen,” he said. “*There is more in the man than there is in the land.* Repeat that after me.”

They did as he asked, all speaking in unison.

“Now each one of you,” he commanded; and his thin, claw-like finger singled out each boy in

turn, as he repeated the words, "There is more in the man than there is in the land."

Stephens' talk to these boys was evidently inspired by some dialect verses which the Georgia poet, Sidney Lanier, had recently published, which he called: "Thar's more in the man than thar is in the land."

Love of his own State, of "The Red Old Hills of Georgia," and pride in her history, were a passion with Alec Stephens. One can imagine how he looked at these young lads, seeing in them the possible fulfillment of his hopes for the future welfare and glory of his State. There was one of his hearers who would not have disappointed him, for this event was one of the sign posts in Lamar's education, and set him traveling along roads that he never afterwards forsook. Not Stephens himself, loved Georgia better than did Joseph Lamar.

On leaving Penn Lucy, Lamar entered the State University, at Athens, Georgia, where he was a student in 1874 and 1875. Athens, in those days, was a leisurely old Southern town, whose spacious white houses, with their pillared porticoes, stood back from the streets in the dignified seclusion of their shaded lawns. It had its stimulating traditions of great men who had lived there. It was the birthplace of Henry W. Grady, the gifted editor and orator; the home of Dr. Crawford Long, one of the discoverers of the use of anesthetics; of Ben Hill who measured swords with Blaine in the Senate of the United States; of Thomas R. R.

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Cobb, the great lawyer, and of Howell Cobb who was Speaker of the House of Representatives from 1849 to 1851, and Secretary of the Treasury in President Buchanan's cabinet. Here young Lamar formed friendships which were to last throughout his life without growing threadbare, and here he would have remained to finish his college course had not circumstances conspired to change his plans. In 1875, his studies were interrupted by an illness which brought him home to Augusta, and before he could return to the University, his father, accepting a call to the pastorate of a Church in Louisville, moved with his family to that city.

In Louisville, their father began to urge upon the two boys the claims of his own *Alma Mater*, Bethany College. He loved the place, and had set his heart on sending his sons there. He had kept in touch with the College, knew its President and admired him, and he had happy memories of his own life as a student at Bethany. For these reasons, and for others which had to do with his strong religious convictions, he laid great stress upon his desire.

The brothers talked it over together. Their inclinations were all toward the State University; and their father had left them free to make their own choice. In one sense they were independent of his wishes, for they had inherited from their grandfather, Squire Rucker, a sufficient fortune for their personal expenses. But their respect and affection for their father was very great, and

in the end his wish proved as compelling as a command could have been. In the fall of 1875, they packed their belongings, rather reluctantly, it must be admitted, and, soon after, they matriculated as students in Bethany College.

Alexander Campbell, in founding the college, had deliberately chosen a retreat where the students would be cut off, as far as possible, from the world and its temptations. And Bethany was ideal in its seclusion. It was a tiny hamlet, tucked away among the West Virginia hills, and, in those days, it was seven miles, two tunnels, five bridges and two toll gates away from the nearest railroad at Wellsburg. The daily stage took two hours to make the journey.

It was a place whose beauty, once seen, must forever haunt one's memory. A clear broad stream, called Buffalo Creek, wound its picturesque way among the encircling hills; past Sycamore Grove and Ghost's Hollow, with here a stretch of clear, still water, reflecting the overhanging elms and thick leaved maples on its shining surface, and there a swift rapids, hurrying over stones and pebbles, and round swelling curves in its haste to join the slow moving waters of the Ohio.

The hills were clothed with verdure to their tops. In the autumn, the scarlet Virginia Creeper festooned the dark green pines, and curtained the entrances to the long, dim tunnels on the Wellsburg road. The maples flamed in red and gold, and the sumach bushes lifted their crimson plumes in every

fence corner. The whistle of the Bob White was heard in the still woods where the autumn leaves drifted down from the trees and made a brilliant carpet underfoot. The air was wine. It was good to be alive.

The little village clustered in a bend of Buffalo Creek, at the foot of the hill on which the college stood. It had grown there because of the college, and was dependent upon it for its very existence. The college faculty and the students—especially the students—were of absorbing interest to all the inhabitants. In the fall of the year, when the college opened, the arrival of the stage coach from Wellsburg was the event of the day. As the citizenry sat on the Post Office steps, awaiting the great moment, they speculated as to the number of pupils who would be enrolled—a vital question with boarding-house and store-keepers. They reviewed the list of undergraduates who might be expected to return, dwelling on the achievements of each one, and loudly championing their special favorites. And when, with a clatter of hoofs and a rattle of chains, the lumbering old vehicle drew up at the Post Office door, they inspected each student as he alighted, and took his measure with a practiced eye. When the excitement of the opening of the session had subsided, the student was still their main source of interest. He was observed with keen discrimination. His feats on the baseball field, his triumphs in the debating societies were known and admired. For he formed

their solitary link with the outside world, with cities, with public men and events.

The college was primarily a theological institution, created to teach the principles of the reformation, that Alexander Campbell and his followers had inaugurated. But in its classical and scientific courses it was by no means sectarian. Among its faculty were men who later filled the chairs of larger and better known universities.

Alexander Campbell died in 1866, and was succeeded in the presidency, by William Kimbrough Pendleton. Dr. Pendleton was born in Virginia, studied law at the University of Virginia, was examined at Richmond and admitted to practice. But he, too, became captivated by the simplicity and catholicity of the teachings of Alexander Campbell. He became a member of the Church of the Disciples, and, at the solicitation of Mr. Campbell, he moved to Bethany and filled the chair of Natural Philosophy in the College. He was a man of dignified and impressive bearing, always scrupulously dressed, always punctual, but always unhurried. The students loved and admired him as much as they feared him. There was nothing they dreaded more than being found out in any misdemeanor by "Billy K." as he was affectionately styled—in his absence. For he had a "choleric blue eye," and a disconcerting habit of going straight to the root of any difficulty in which a student became involved. He would uncover all the weak points in a boy's defense by one or two

well-aimed questions; and then he would speak only a few words of censure; or he would make no comment, leaving the transgressor to deal, as best he might with a newly awakened sense of shame.

Dr. Pendleton was a man of wide reading and broad culture. The walls of his large library were book lined, from floor to ceiling. He knew every volume as he knew the paths around Bethany, and could find his way about among them as easily. In the class room, however, his methods were the opposite of what one would have expected. He rarely allowed even the most indolent student to fail utterly. He would not accept the facile "not prepared, Professor," with which an indifferent scholar would seek to dispose of an unfamiliar topic. He persisted in his questioning until some-kind of an answer was forthcoming, and, thereafter, the student, in sheer self defense against a repetition of such searching cross examination, would prepare himself for the next recitation. But the questioning was done with the kindest interest in bringing out what the pupil really knew, and in stimulating him to add to his store of information. There was never a student of the college in Dr. Pendleton's day who did not remember him with gratitude and credit him with a large measure of any success that he subsequently achieved.

Very different were the methods of the brilliant Alsatian, Charles Louis Loos, who taught Latin and Greek in the college. His students dreaded his ironies as they would the sting of a lash. There

was one of them who regularly answered every question put to him by saying: "I don't know, Professor." At last Loos expostulated. "My dear young man," he entreated, "don't always say you don't know. Let us believe that once there was something that you did know. Say you have forgotten."

Obedient to the suggestion, at the next recitation the young man replied to the first question: "I did know that, Professor, but I have forgotten it."

But the professor was ready for him. He threw up his hands in mock despair. "What an unspeakable calamity!" he exclaimed. "What a loss to the world! That is a question to which scientists have been seeking the answer for a thousand years, and this young man knew it and has forgotten it!"

At Bethany, Lamar pursued his education largely according to the dictates of his own fancy. He infused new life into one of the two debating societies by the enthusiasm, the regularity and the seriousness with which he spoke on every subject, no matter which side of the argument was assigned him. And not content with this opportunity for public discussion, he violated all precedent by joining what was called the "Preacher's Society," and there debating such questions as fore-ordination and baptismal regeneration.

He read incessantly, yet with judgment. In the dining room of the house where he boarded, for

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example, there was a complete set of bound volumes of Harper's Magazine, and, while he waited for the tardy meals to be served, he read those volumes; read practically all there was in them, and stored away in his obedient memory everything that might prove of service to him in future years.

Mathematics he simply ignored; to this day no one knows how he managed to pass his examinations. But Latin he read and translated with an ease and fluency which was the admiration and the despair of his classmates.

He was pitcher for the college baseball team; prompter and an occasional actor in the college theatricals; an enthusiastic member of his Greek letter fraternity, and one who could be counted on for most social functions. His father wrote of him while at college:

“The boys are juniors in Bethany College—Joe knowing pretty much everything outside the course, and Phil pretty much everything in it. Together they make a good team. Joe has a great deal of the positive in his character, thinks for himself, and generally thinks very soundly and safely. Phil has more respect for the traditions of society, and feels a little surer of his convictions if he has somebody to agree with him.”

From one of Joe Lamar's classmates at Bethany we have this comment:

"His was always a mature and judicial mind, and his brother Phil and I always deferred to his wise judgment. During his senior year at College along with his other studies, he read Blackstone. But despite his studious habits he took a keen interest in outdoor sports and was an excellent baseball pitcher; he and Phil, as catcher, formed a crack battery."

Speaking of baseball, it is said that upon an occasion when he had struck out twice on coming to the bat, he said, casually, that if it happened again he would stop playing ball. It did happen again, and he dropped his bat and walked off the diamond, and nothing would ever induce him to return to it again as a player. Was this sheer obstinacy? Or, as seems more likely, had he already made up his mind to give up the game, and was he taking this rather spectacular way of putting his resolution into effect? Whatever his reason, the action was very like him. In time his family came to take note of these casual promises, for he had a way of remembering them and keeping them.

A friend who knew him at college has left this description of him: "He was tall and slender with the brightest eyes I had ever seen, and an originality of speech and an independence of thought that aroused my interest and amazement. I was, by nature, a respecter of expert opinion, accustomed to settle a question by quoting a recognized authority with an air of finality which, to my

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astonishment, made not the slightest impression upon Mr. Lamar."

Lamar was a student at Bethany for two years, graduating in June, 1877. In the autumn he entered Washington and Lee University to study law under Charles A. Graves, later professor of Law in the University of Virginia. But he did not take his degree. During the Christmas holidays, he paid a visit to Bethany. From there he returned to Augusta, where he read law in the office of Henry Clay Foster. Legal examinations, in those days, were conducted orally, in open court. On the day that Mr. Lamar stood this test, it happened that Mr. Charles Estes—one of Augusta's shrewdest and most respected citizens—was in the court room. At that time he had no knowledge of, or interest in, the young applicant, but, in after years, when Lamar became his trusted legal adviser, he was fond of recalling this scene. As he listened to the questions asked, and heard Lamar's answers, he said that it was evident that the student knew so much more about the subject than his examiner, that he wanted to suggest that their positions be reversed.

In April, 1878, at the age of twenty, Joseph Lamar was admitted to practice at the bar of Georgia.

## CHAPTER III

### NUMBER 1209 GREENE STREET

JOSEPH LAMAR was married on January thirtieth, 1879, to Clarinda Huntington Pendleton, a daughter of Dr. William K. Pendleton, the President of Bethany College. After a brief residence in Louisville, Kentucky, where Lamar had a desk in the office of a prominent lawyer, the couple returned to Bethany, and, for the next year, made their home with Dr. and Mrs. Pendleton. Lamar was instructor in Latin in the College, during this period, but this was not intended as a change in his profession. It was a temporary arrangement, and, during the year that he spent in Bethany, he devoted his spare time to reading law as well as general literature.

As to the latter, he had no choice, for reading aloud was the principal diversion in his father-in-law's family. Mr. Lamar said that it was always going on, in one room or another, in Dr. Pendleton's house. The reader might not change; but the audience always did. People would come and go as they pleased, but the reading would continue with only brief interruptions for the purpose of putting new listeners in touch with the devel-

opments of the book in hand, and a long course of training had made the family extremely agile in catching up with the plot of a story or a play. In the beginning, Mr. Lamar offered a show of resistance to this form of recreation. He asserted that the family had formed a being-read-to-aloud habit, and had grown so accustomed to the murmur of the reader's voice, that they missed it, when it was silent, as they missed the rhythm of the katy-dids, on summer nights, if, for any reason these insects adjourned their seasonal disputes. He said that the listeners were really occupied with their own thoughts, and did not concern themselves with what was being read. He supported this theory by claiming that, upon one occasion, when he was the reader, he had tried an experiment with a volume of Carlyle's Essays. The text was printed in parallel columns and he read a paragraph from one column and then one from the next, and kept up this antiphonal method for half an hour, while his audience noticed nothing unusual.

The family defended themselves by saying that the author he had chosen was singularly well adapted to this mode of treatment. They said that the essay had sounded somewhat irrelevant, but that they were too polite to offer any criticisms; and that, as they were then breaking him in to the family custom, they dared not risk a complaint. But the question remained an open issue.

Lamar's elder son, Philip Rucker Lamar, was

born at Bethany in June, 1880. He was named for his father's only brother, who was a young man of great promise and of a most loveable nature.

The shadow of an approaching sorrow had even then fallen on Mr. Lamar's life. His brother Phil, had for some time been in failing health. There was a great affection between the two, and, in order to be near him, and to resume the practice of his profession, Lamar had for some time been considering a return to Augusta. In July, 1880, he received an offer of a partnership from Henry Clay Foster, the lawyer in whose office he had read law. The offer was accepted to take effect in the early fall, and on September twenty-fifth, 1880, Mr. Lamar arrived in Augusta. Two days later, he formed the partnership which was to last until Mr. Foster's death, in 1890. From this time, wherever he might be, Lamar always called *Augusta home*.

Lamar's father was then living on the "Sand Hills," three miles from Augusta. Lamar joined him there, on his arrival, and, a month later, the rest of his little family came, and the circle was complete. The Lamars had been married for nearly two years, and in all that time, had never had a home of their own. But, after a little delay, they bought a house on upper Greene Street, Number 1209, and their family life began to shape itself around that house. It was enlarged, a little later, and an adjacent lot added, in the rear, and twenty-three eventful years were spent there. But

no city house is a home in the sense that a country house can be. No matter how fine it is, nor how saturated with memories it may become, it cannot take the place in one's affections, of living, growing things, of trees and flowers and birds. But, in 1880, the Lamars didn't know that, and were as happy as sandpipers in the possession of a home of their own, after wanting one and trying to do without it for nearly two years.

It was a hospitable house. Friends and relatives—Lamars, Pendletons, Ruckers, Fords, other kinsfolk, and neighbors—came and went and filled it with cheerful company. Its guest room was seldom empty. Sometimes the family would "double up," as families knew how to do in those days, to accommodate the visitors who overflowed the guest room.

Mr. Lamar himself was incurably hospitable, and was always surprising his wife by bringing home unexpected guests. He had his own original way of informing her of the fact when special preparations were necessary. She answered the telephone one day and recognized his voice. The following conversation ensued:

"Is that you, Colonel?" he asked.

"Yes. What do you want?" she answered.

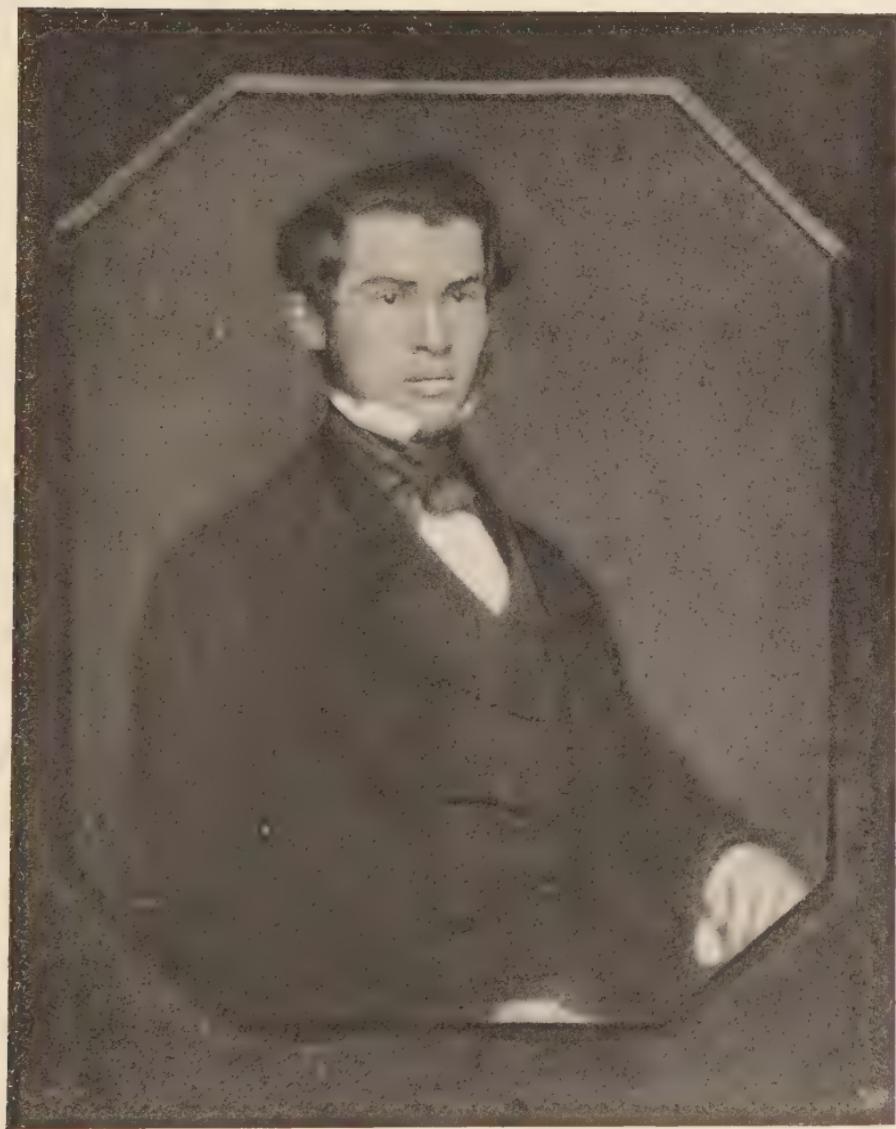
"Well,"

"What is it?"

"Yes,"

"You called me, tell me what you want."

"Yes?" encouragingly.



Hollinger & Co.

**JAMES SANFORD LAMAR**



“What *is* the matter?”

“Well,”

After a moment’s reflection she said,

“Do you mean there is some one in the office before whom you cannot talk?”

“Yes,” hopefully.

Remembering his hospitable habits, the next step was easy.

“You mean there is someone you want to bring home to dinner?”

“Yes,” triumphantly.

“Men or women?”

“Well?”

“Men?”

“Yes,” with increased confidence.

“How many?”

“Well?”

And a few more moves in this game of twenty questions elicited the information that he had invited two men to dinner and had adopted this means of breaking the news to his wife in their presence.

Mr. Lamar’s second son, William Pendleton Lamar, was born in the Greene Street house in October, 1882. In December, 1884, Mr. Lamar wrote to his father James S. Lamar:

“The two boys are themselves and beatifically happy in the possession of a quart of marbles which Aunt Sarah Rucker brought with her last week from Athens. Phil’s appetite for stories grows

more exacting . . . After becoming thoroughly familiar with Robinson Crusoe and listening for a day or so to Sinbad the Sailor, and Ali Baba and the Forty Thieves, he called for another sort of tale, which I was not able to tell. Finally, as an experiment, I gave him a short story of the graphic features of Homer's Iliad and Virgil's Trojan Horse, combined. I wish you could have seen his delight. He thinks it the very best story of all and no sooner do I enter the house than I am placed in durance vile and made to tell it all over again. He is quite familiar with the names of the heroes,—so much so that when I went home to dinner yesterday I found him playing with A. B., he acting the part of Achilles and trying to induce her to be Hector so that he could drag her around the walls of his improvised Troy. . . .”

As the boys grew older, they were insatiable in their demands for these tales and for the Bible stories which rivaled the classics as “best tellers.” The younger boy—then known in the family as “Brother William”—was too tender hearted to endure the most gory of these narratives. His brother Phil, two years older, would entreat his father to tell them about “Little David and Goliath.”

“No,” the other would protest. “I don’t like to hear ‘bout Goliath. *It’s got too much hurtin’ in it.*”

"Well, tell about Little David and leave out Goliath."

"But Goliath *have* to be in it, don't he, Father?"

Their father had a way of defending himself when he was too much pressed by this eager audience. There was the steamboat story, which began like this:

"Once there was a great, big steam-boat coming down the river, with its wheels churning up the water, and it said: 'Ong-g-g-g-g-g.'"

The imitation of the deep bass whistle would continue until the narrator was out of breath or until the boys would protest; "Oh, go on, Father, we *heard* the whistle." Finally, the story teller would continue:

"And another steam-boat came up the river, turning its wheels and churning up the water, and saying: 'Ing-g-g-g-g-g-g.'"

Then the high, shrill whistle of the second boat would continue indefinitely.

That was all there was to that story. Yet the children's interest in it never flagged. There was always the hope that some day they would learn the real business of those boats.

The two little fellows were carefully trained by their father to think that their mother was the embodiment of all that was beautiful and desirable in a parent. This lesson was so well learned that it sometimes got the teacher into difficulties. He was telling them the story of Paris and the Apple of Discord, one evening, and began with the

sweeping statement that Helen was the most beautiful woman in the world. Instantly his well drilled audience excepted: "As pretty as Mother?"

"We-ell," he temporized, diplomatically. "You see your Mother wasn't born then. If she had been living, Helen would have been *the next prettiest*."

He always made friends with children; never talking down to them as is the way of many "grown-ups." But the seriousness of his fooling sometimes produced unexpected results. He was discussing the alphabet with a little girl who was just making its acquaintance, and asked her to show him the letter B. When she pointed to B he began to argue with her that it was A. After a while she abandoned the controversy, and, later, remarked to her father, "Isn't it a pity Father? Judge Lamar doesn't know his letters."

As might have been expected, his own boys were apt to forget that they were not as old as their father. When one of them was taken out to his first evening entertainment, a Sunday School Christmas Tree, this fact was called to his attention. He was wild to go, but his father kept raising the question of his age and size, and insisted that he was too small to be going out at night.

At last they started, the small boy walking between his father and mother. When the light from the street lamp threw their shadows on the sidewalk—the two tall grown-up shadows, with the little shadow between them—his father pointed

to it and said: "Don't you see how little you are? I'm afraid you are too small to go to a Christmas tree at night."

There was no response. The small figure trudged along in silence. Presently, as they left the street lamp in the rear, and the three shadows lengthened until they reached the end of the square, the little fellow exclaimed, gleefully: "Look there, Father; see how I've growed."

Those were happy years for the family. Home life is pleasantest in an old, settled town, and their surroundings were unusually congenial. But no matter where the Lamars might have lived, life could never have been dull. The head of the house furnished an inexhaustible source of interest.

It is hard to define that elusive thing that we call charm, or those characteristics which make one what is known as "good company," but Mr. Lamar possessed them all to an unusual degree, and exhibited them in unusual ways. Indeed, one of the most striking things about him was his delightful unexpectedness; the fact that he was sure to do or say something quite different from what one looked for. And this was not because he was erratic or fickle. It was due, rather, to the fact that he was absolutely sincere in all that he did and said. There was nothing premeditated about him. He never posed, or governed his words or actions by what he thought was expected of him. They were born of the hour and the occasion; and were the natural, spontaneous ex-

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pression of his thought or his feeling at the moment.

There is a very successful form of diplomacy which consists in telling the simple truth about anything that one wishes to conceal. And perhaps a man who habitually acts and speaks the plain truth, always carries with him an element of unexpectedness. This characteristic was enhanced by Lamar's originality, which was a family trait, and by the keen sense of humor which was also his birthright. His friends were never surprised at anything he might say or do.

One of them asked him to dinner one day quite informally, and, to further her request, promised that she would make no special preparation for him.

"Then I will wait and come when you have made special preparations," he replied.

As he was leaving home for Savannah, one evening, his partner, Judge Callaway, telephoned to ask him to attend to some business matters in that city in which Judge Callaway was interested. Mr. Lamar was notoriously absent minded, and without a moment's hesitation, he called the Western Union and dictated this message to himself:

"J. R. Lamar, The De Soto Hotel, Savannah, Georgia: Don't forget Judge Callaway's commission.

J. R. Lamar."

He had an absent minded man's faculty for misplacing things, for which he would search in vain. Mrs. Lamar soon developed an aptitude for finding these lost articles which he pretended to regard as little short of superhuman. Whereupon, he amused himself by constructing an elaborate theory to account for her infallibility. Every statement that she made, every position that she took was absolutely correct, he insisted. Not at all because she was really right. No one, he said, could possibly be right so often. But because, when the facts did not sustain her, she was able, in some mysterious way, to change them so that they would. If, for example, she said that a thing was in a certain place, it was sure to be there when you went to look for it—even though you had seen it somewhere else, a moment before. She could always move it to the place where she had said that it was. He discovered a name for the control that she had over persons and things. He said that she "Vrilled"<sup>1</sup> them.

Once, in later years, when they were wandering through a Canadian village, they happened to differ as to the location of a little church they had seen. At Mr. Lamar's suggestion they hurried back, "before she could have time to vrill it." But when they reached the corner where she had said that it was—there it stood. Her husband pretended to be lost in amazement at the feat

<sup>1</sup> This name was probably borrowed from *The Coming Race*, by Lord Lytton.

she had performed. For the rest of their walk he enlarged upon it as the most wonderful exhibition of *vrilling* that he had ever seen. He wondered what the minister and the congregation would think, on the following Sunday, when they went to the spot where the church had always stood—where he, himself, had seen it, only a few moments before—and found it gone!

Lamar had his own methods with merchants and hotel clerks. Upon another occasion they stopped, between trains, for breakfast at a hotel that was managed on more expensive and restrictive lines than any they had ever encountered. The prices took away their appetites. Mr. Lamar couldn't get a shave without taking a room. After one or two similar rebuffs, he inquired, innocently:

“Does it cost anything to *leave* this hotel?”

One of the conceits with which he added to the gaiety of life was, that one should not tempt Providence by any boasting whatever—not even the mere assertion of good health or prosperity. And when you asked him, casually, how he was, he was apt to reply that he was “no worse.”

He was always full of vivid interest in people and in things. Life was never prosaic to him. When he traveled, the places that he saw and the people whom he met always displayed some characteristics that appealed to his imagination. When he sat in his own doorway, or walked in his own yard, he would see a spider weave an

intricate web, or a bird build its nest in a way that was new and interesting.

A temperament so ardent was inevitably marked by characteristic failings. He was unduly sensitive to criticism, to rebuke of any kind. Only once did he face the give and take, the slander and abuse of a political campaign. He showed himself no mean antagonist, he won his fight. But he never made another campaign.

He was inclined to set too high a standard for fallible mortals, and to be too exacting in his requirements of them. Not of men and women in general. But of himself and of those for whom he felt responsible—his family, his relatives and his intimate friends. No one outside of his immediate household ever suspected the depth of his self abasement over any error, any failure, that he made. He was once discussing a man who was exceedingly shallow. In the midst of an amusing description of this acquaintance, he suddenly broke off and said,

“Talk about C. fishing in a foot-tub, and here am I sailing up and down in a thimble.”

His gesture suggested a fleet of argosies, with swelling sails, running before the wind.

He had a habit which almost amounted to a fault, of making light of whatever he did himself, though he was apt to over-estimate what was done by others. The effect of this habit upon those who did not know him, was sometimes misleading. Men are so given to crying up their

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own wares, that one is apt to take him at his word who cries them down. And speaking of wares, he had a piece of real estate for sale, and the would-be purchaser began to point out its drawbacks in an effort to reduce the price. To his amazement, Mr. Lamar agreed with him. He went further and mentioned other defects of which the purchaser was ignorant. When he had enlarged upon all the undesirable features of the property, he added: "But that is the price for which I will sell it."

"Let the buyer beware." But what are you to do with such a seller?

He never hesitated over a question of ethics, as to whether he could, with propriety, do a certain thing or not. His rule was simple and inexorable. If there were any question about it, the question furnished the answer. It must not be done.

He was a Trustee in his father's Church, though not until the Reverend James Lamar had resigned the active pastorate. He would sometimes speak at the weekly prayer-meeting. But he would never pray in public. One evening he attended a meeting at a Presbyterian Church. He discovered, to his alarm, that the Pastor was calling upon different men in the congregation to lead in prayer. As they knelt during one of the petitions, he whispered to his wife: "If he calls on me, what shall I say?" "Repeat the Lord's Prayer," she suggested. This afforded only tem-

porary relief. His panic returned. "How does it begin?" he whispered.

During the years that they lived at 1209 Greene Street, Mr. Lamar's practice was steadily growing, the cases entrusted to him becoming more important and his success with them more marked. His family learned these facts from observation and hearsay—not from him. He himself would never admit success unless closely taxed with it, but he was always ready to mention any failures. Upon one occasion when he had lost an important case (though he considered all of his cases important), he wrote to his father: "If I could lay any claim to being a Napoleon, this has been a week of Waterloo."

But this pessimistic point of view was entirely consistent with a very cheerful and sunny disposition. His pessimism was a conscious and deliberate attitude which he carried into everything that he did. Success could take care of itself; it was failure that needed attention. He made it a rule to go into every trial expecting and prepared for defeat, for he said that he did not put forth his best efforts unless the case seemed desperate. He took his anxieties cheerfully, however, and was always ready to joke about them.

His work was unremitting. He had a law library at the house on Greene Street, as well as at his office. He would often come home to luncheon or dinner, wholly absorbed in some question that required immediate investigation, and

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he would go directly to his bookshelves and immerse himself in a law book. At such moments, it would have been as easy to secure the attention of one of the portraits on the wall as to attract his notice. Mrs. Lamar was his home secretary, and continued to be, even after the advent of the stenographer and typewriter. In the evening she would sit by his table, reading or sewing, with a pencil and paper at hand, ready to take down a citation or notes on an argument that he was arranging. They enjoyed those evenings. The law, as he pursued and loved it was no dry and dusty theme. He put life into it. His humor played about its technicalities. When he was preparing a case for trial they fought pitched battles over every foot of the way. Her husband said that if he could convince her he had no fear of any jury. For Mrs. Lamar had the traditional attitude of the normal wife; she was always on the alert lest he be betrayed into some error of fact or of judgment.

Those early years brought sorrow as well as joy to the house on Greene Street. Mr. Lamar's brother Phil grew no better. He was slowly but surely failing, and nothing could be done to save him. He spent much of his time with his brother's family, lavishing his affections upon his small namesake; cherishing the hope—which was denied him—that he might live long enough to have the baby trot along by his side, “holding to his finger.” It was a joy to him to feel that although

he was cut off in his youth, and the promises of life denied him, yet his name and memory would live on in the person of this child.

The end of Phil Lamar's gallant fight for life came on the second of January, 1882, and cast a shadow over the family. The two brothers were deeply attached to each other. They had always been together, throughout their childhood and early youth. Mr. Lamar's sorrow was unostentatious, but lasting.

The grass was hardly green on Phil Lamar's grave when they began to be concerned about the health of their sister Mary. She was an unusually attractive woman. She was beautiful, but with a loveliness of character and disposition that almost made one forget her physical charm. Her brother Phil's untimely death had drawn her even closer to the brother who was left, if that were possible. Her last illness came while she was staying at his home. She died there in November, 1883. After Mary Lamar had left it, the house on Greene Street was very quiet for a long time. But two years later, in 1885, Mr. Lamar's third and last child, a daughter, was born. She was named Mary, in memory of his mother and sister, and, with her coming, life seemed to take on something of its former radiance and joy. But death had not yet taken its full toll of the household. In June Mrs. Lamar was taken grievously ill, her life was despaired of, and in July, 1885, the baby died.

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The little family had come to Augusta five years earlier, and the records of births and deaths in the family Bible had been crowded into those years.

## CHAPTER IV

### A PUBLIC SERVANT

IN the summer of 1886, by the advice of one of his friends of the Augusta Bar, Mr. Lamar entered the race for the State Legislature. He had a formidable opponent in the Honorable William H. Fleming, who later represented the Augusta District in Congress. Both contestants were good speakers, and the race was an exciting one in which the city took a decided interest. Lamar threw himself into the contest whole heartedly—and won. But it was his last as well as his first political campaign. When it was over he said that he would never make another race. This proved to be another of the casual promises which were lightly made but seriously kept. In later years, he was elected to more than one position, but always without opposition; and no lure of office nor any solicitation of friends could induce him to alter his determination.

His first term began in the autumn of 1886, and he went at the business of law making with the same zest with which he practiced the profession at the Bar. He earned such a reputation for industry that a story was current in Atlanta of a

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fellow member who rose in his place during the summer session and gravely remarked that, as the days were long and the weather uncomfortably warm, he moved that the Legislature "do now adjourn for an indefinite recess, and let the Clerk and Joe Lamar finish the business of the session."

Lamar served on the committees on railroads, on the general judiciary, on banks and on the revision of judicial circuits. The bills that he introduced and sponsored through their passage, dealt mainly with questions in which he was interested as a lawyer, and which made for clearness, expedition and economy in the administration of justice. Speaking of one of these bills, whose adoption he was instrumental in securing, after it had become law and at a time when its practical effect could be recognized, one of his colleagues said:

"The Act [to establish an uniform pleading] made a great and notable change in the law of pleading; but it has worked so smoothly and fitted so nicely into the practice of our courts that it has not attracted anything like the attention it deserves. In a page it announced rules of pleading which give to the Georgia practitioner all of the desirable features of code procedure, without the minutia, subdivisions and details which have so cumbered the Codes of Procedure in New York and other Code States . . ."

At the time of his election in 1886, Lamar had announced his intention of serving for one term only. At the close of the session of 1886-7, he resumed his practice in Augusta, and, although a good deal of pressure was brought to bear upon him to induce him to stand for re-election, he was firm in his refusal to allow his name to be put in nomination. During the following summer before the next election was held, he joined Mrs. Lamar and the children in a visit to Dr. and Mrs. Pendleton at Bethany. In September of that year occurred one of the most disastrous floods that ever visited Augusta, and, on their return to the city, the Lamars found the Savannah River slowly receding from their house which had stood, overnight, in eighteen inches of water.

But this was not the only surprise that welcomed them. Mr. Lamar found that his friends had taken advantage of his absence to insert a card in the paper announcing his candidacy for the legislature, saying, frankly, that he was "away from home and had declined to run, but it was hoped that he would serve if elected." His first impulse, naturally, was to refuse to serve. But the election was close at hand, there was no one running against him, and there were matters to come before the House in which the interests of Augusta were concerned. And so he stood for re-election, and took his seat for a second term.

The legislative session of 1888-9 was an important one in the history of the State. It oc-

curred at a time when there was intense, popular antagonism to all corporations, and especially to railroads. Early in the session, a bill was introduced, widely known as the "Olive Bill," which was designed to put a railroad at the mercy of any dissatisfied citizen who, by taking certain steps, could effect a repeal of its charter. Or, as Lamar put it: "For any offense which a road could commit, . . . the penalty would be death; because forfeiting its charter is death to a corporation exactly as chartering it is its birth."

Mr. Lamar's practice in the courts had heretofore been more often against railroads than for them, and he had won some very important victories in these cases. But he believed that this bill would be of infinite harm to the best interests of the people, and he set himself to oppose it with every argument at his command. Those familiar with the facts say that the bill owed its defeat to a single speech that he made against it in the Committee.

His correspondence shows that the speech was extemporaneous. After the legislature had adjourned, the attorneys who represented a State-owned railroad, asked him to allow his remarks to be printed and circulated, as a means of stemming the tide of popular prejudice against railroads. It then appeared that he had no copy of the speech save the reports in the newspapers of the period. He reproduced it, however, to the best of his recollection, and it seems to have been useful in secur-

ing a more advantageous lease of the road than could otherwise have been obtained.

It is interesting to read Lamar's summing up of his own career at the end of his legislative experience. In 1889, some one wrote to ask him for the leading events in his life to be used as the basis of a biographical sketch. He replied:

"I am in receipt of your kind letter of yesterday. I recollect having heard that Dr. Johnson said he 'could write the life of a broomstick,' but I couldn't —nor can I write my own. The facts you ask I can furnish, as follows:

"I was born October fourteenth, 1857; was admitted to the Bar in 1878 and began practicing law in 1880; was elected to the legislature in 1886; re-elected in 1888—and with this ends my list of important facts.

"I am exceedingly obliged to you for your kindness."

This letter sounds almost ungracious. But he had a deep seated objection to self advertisement. "Let another praise thee and not thine own lips," might well have been his motto.

As a result of his two terms in the legislature, Lamar acquired friends who stood by him as long as he lived. He had a knack for making friends, and a great willingness to be of service to them. But his legislative experience had other important results. It made him known to Augusta

as he was already known to his clients; and from this period we find him constantly called upon for public services which he always found time to render.

During his second term in the legislature, a movement was inaugurated in Augusta which had for its object the improvement of the city government. A "Committee of One Hundred," was formed for this purpose, composed of some of Augusta's leading citizens. Mr. Lamar, who was then in Atlanta, in attendance on the legislature, was elected chairman, in his absence, and was called to Augusta to preside over its initial meeting. As a result of this meeting a new city council was elected. Lamar was chosen a member, and was appointed chairman of the municipal department of Canals and Waterways. The size and importance of the Augusta canal, and the fact that it furnished light and power for all the city's public utilities, as well as for its cotton mills and other factories, made this department one of the most important in the city government. Lamar found it a kind of pension bureau, in which a number of worthy, but elderly, infirm or otherwise incompetent citizens were provided for, at the city's expense. It is doubtful whether he ever attempted a more difficult or trying service than the reform of this department. It was heart-breaking work. While it lasted his front hall was more or less permanently occupied by forlorn looking ladies, who appeared, as a rule, at

meal times to inquire why their husbands, brothers or fathers had been dropped from the city's pay-roll. The most appealing cases he assisted from his own purse.

He was President of the Library Association; President of Augusta's first Lecture Bureau; a Director of the Orphan Asylum and of the Young Men's Christian Association. He was a Trustee of the Richmond Academy, a member of the Board of the Medical College, and whenever a new enterprise was inaugurated in Augusta, he was counted upon to take an active part in its organization.

In 1893, he attended a large mass meeting called to form a Young Men's Business League for the commercial advancement of the city. The newspaper accounts of the meeting report that "there were loud calls for Mr. J. R. Lamar," and the speech that he made in reply to the calls so electrified his audience that he was forthwith chosen president of the organization, and next morning had the pleasure of seeing extracts from his remarks displayed in large type in nearly every column in the morning paper. He held the position for several years, and devoted much time and energy to plans for the city's business advancement.

He was called upon for speeches at banquets, at conventions, at the opening of Augusta's two cotton expositions, and at all meetings where new plans were to be set on foot. He was not a flowery nor an eloquent speaker. His addresses abounded

in facts, the harvest of his wide reading and obedient memory—facts which he knew how to weld together to make them serve his purpose and to set people thinking. Two of his speeches created a decided impression throughout the State, and greatly enhanced his growing reputation as an effective speaker. The first was delivered at a Fourth of July celebration, which was held in a pavilion at a park on the outskirts of the city. In spite of the hot weather, which was not conducive to exertion of any kind, the citizens gathered in hundreds to hear him and his voice was distinctly audible to every one in his audience. They did not hear the rhetorical fireworks which usually illumine such occasions, but listened to an exposition of the result, in America, of the principles laid down, for the first time in the world's history, by the Declaration of Independence. He said:

“There is another doctrine, which is unconsciously taught by the Declaration of Independence. It is the absolute supremacy of the law. Jefferson had been born under a government whose cardinal principle was that the King could do no wrong. And yet the Declaration was an indictment against the King himself. This list of wrongs; these thirty counts, were not against the people of England, but against one man—the King. The Declaration taught that no man was

above the law. And, without special comment, that unheard-of doctrine found its way, ten years later, into the Constitution of the United States, which provided that the President could be impeached. Theretofore the chief rulers had always been the fountain of Justice, but were beyond the reach of its sword. This new experiment among governments made no exception. Only the law was supreme. And as no one was too low to be beyond its protecting reach, no one should be too high to be above its avenging power.

"We have tested this principle, and, in so doing, have given possibly the most marked and unique spectacle in the political history of mankind. Other nations had, without law—or, under a law made for the occasion—tried their rulers. These trials were always in the midst of war; they were the last act in an accomplished revolution. It was a death struggle; and, when the trial took place, the verdict had been registered in advance. The death of Charles the First and the beheading of Louis the Sixteenth were but natural, the people who had dared to try their king could only hope for safety in beheading him. It was left for this people to exhibit the trial of one who was vested with kingly power, and yet who, on his trial, could be acquitted. Acquitted, too, solely by the forms of law. The moral effect was against the President; a majority of the population and wealth of the land sought his downfall. There was less than a fraction of one vote short

of the two-thirds necessary to convict, and yet, by that hair's breadth, he escaped; and so great was the universal respect for law, that he governed, during the trial, by virtue of the presumption of innocence; and, after the narrow and technical acquittal, continued to exercise his high office. There is nothing like it in the annals of mankind.

“And again, in 1877 . . . the question who should be President of the United States was submitted to a tribunal for decision. Such questions had arisen in Europe and the dispute was invariably decided by an appeal to arms. The Wars of the Roses, the countless wars of succession, had occasioned the spilling of seas of blood. Thrones were not to be given or withheld according to law. Might made right; the heaviest battalions decided such questions.

“It was law that decided the question for us. Again the moral weight of the verdict was, perhaps, with the losing party. One vote—and the love of order on the part of the people, preserved peace; and the decision was acquiesced in as fully as if the dispute had never arisen.

Again, within the past six months, we have exhibited another evidence of our respect for the supremacy of law—not simply a love of peace—but a recognition of the claims of reason and of right, and of the fact that they stand a better chance of vindication before even a fallible tribunal, than in the midst of contending armies, and the senseless arguments of cannon . . . The

United States has summoned Great Britain and Venezuela before it, to try an action of ejectment for a disputed territory, and the air is filled with the talk of international arbitration, as a means of settling all great, international questions.

“Fellow Citizens: we have a lesson to learn from this. We ought not to put ourselves above the law. In a country where it has reached such supremacy; where a king has been indicted; where a president has been tried; where a disputed throne has been bestowed as the result of a decision, we can afford to let the law take its course. Lynch law has no place on American soil.

“We ourselves make the law. We elect the judge, and we ourselves act as jurors, and if we have lost confidence in ourselves, it is to confess that we are unworthy successors of those who gave us the heritage we have today heard read . . . .”

The other address was called *The Private Soldier of the Confederacy*. It was published by the *Brooklyn Eagle*, and can best be described in the language of Mr. Albert Shaw, the Editor of *The Review of Reviews*, who wrote an introduction for the pamphlet in which it appeared. He said:

“The address herewith published was delivered at Athens, Georgia, in April of the present year, 1902. The day was one set apart in memory of the soldiers of the Confederacy. The occasion

was a memorial service held under the auspices of the Daughters of the Confederacy, and the speaker was a man who bears a name distinguished in the annals of the South and of the Nation, who is also himself eminent at the bar of his State,—Hon. Joseph R. Lamar, of Augusta, Georgia. It so happened that there were present at Athens a considerable number of people from other States who were spending several days attending the Conference on Southern Education, and among these were several scores of people from the Northern States. The Educational Conference adjourned in recognition of Memorial Day, and many of its members attended the services and heard Mr. Lamar's address. The Northern visitors were especially impressed,—not more by the rare felicity of its diction, the philosophical quality of mind it displayed, and its thoughtful interpretations of history, than by its timely character and practical usefulness. They felt that it ought to be printed for the enlightenment of the North and the incitement of the South. As a consequence, the address appears in the present form.

. . . Mr. Lamar shows us in this address wherein and why the common soldier of the Confederacy was so remarkable a type of manhood. Having done this in well-weighed words wholly free from rhetorical exaggeration, Mr. Lamar proceeds to show that his purpose is not that of a mere eulogy. He has analyzed the quality of American heroism as typified in the common

soldier of the Confederacy in order to ask and answer the question, What now belongs to the part that should be played by the successors of those men of the sixties, who would wish to be equally true to the demands of patriotism?

“His spirit in dealing with this question is well expressed in his motto, ‘Patriotism is but one of the many names of duty.’ Whereupon, he takes up courageously the race question of the South, and every word he utters is a golden word of wisdom . . .”

## CHAPTER V

### BOOKS AND PAPERS

IN 1892, Lamar was invited to deliver the principal address before the ninth session of the Georgia Bar Association, which met, on June first, at Macon, Georgia. He read a paper called, "Georgia's Contribution to Law Reform," which disclosed some interesting facts with regard to Georgia's priority in this field. He showed that as early as 1799, in the legislature of the sparsely settled State of Georgia some "unheralded reformer" had introduced and passed an Act which anticipated the great work of David Dudley Field in the simplification of pleading and practice. He said:

"The Act of 1799, in terms, abolished special pleading; repealed all distinctions between forms of action; in a sentence, requiring the 'cause of action to be fully, plainly and distinctly set forth,' announced a principle governing pleadings which a century of actual experience has demonstrated to be both comprehensive and elastic enough to meet the requirements of the simplest or most complicated case."

He pointed out that not only was this true, but that Georgia had blazed the path to codification of the common law. He discussed the codes with which Europe has been familiar for generations; "the Code Napoleon, the Codes of Holland, Belgium, and Spain, and that first and greatest, with which all our ideas of civil law are associated, the Code of Justinian."

"In discussing codification [he continued] both as a fact and as a theory it is well to bear in mind that neither code nor statute nor common law has ever attempted to state the fundamental law out of which all law springs. Despite the fact that Blackstone defines it to be 'a rule of action commanding what is right, and prohibiting what is wrong'; nobody ever read a law commanding what is right, and very few, in terms prohibiting what is wrong.

"No law *commands* the citizen to do right, to perform his contract to pay his debts, to deal honestly and justly with his neighbor.

"Our law does not, in terms, forbid murder or any crime. Only Moses says: '*thou shalt*' and '*thou shalt not.*' He alone commands and he alone forbids. Except in revealed religion, commands to do right and prohibition against wrong, as laws, are not to be found. . . .

"Man's jurisprudence, without repeating, takes all this for granted; assumes that '*thou shalt do no murder*' and defines what murder is; assumes

that 'thou shalt not steal,' defines larceny; assumes that 'thou shalt pay thy debts' and provides a means to enforce payment. . . .

"It is a great system of restrictions and limitations and exceptions. The natural law is 'thou shalt pay.' Our law provides that if the contract be legal; for a valuable consideration; expressed in writing; signed by the proper party; sued within six years 'thou shalt pay.' . . ."

The address attracted wide attention on account of the interesting facts which it brought to light. It was printed in the leading law journals and was the occasion of a letter from Lamar's cousin, L. Q. C. Lamar, in which he said:

"I have also read, with more pleasure than I can express, your paper before the Georgia Bar Association on 'Georgia's Contribution to Law Reform.' I can see in nearly every line of it the movement of a powerful, thoroughly informed and well disciplined intellect. It has been an edifying study to my own mind; although, when I was a young man, just beginning to practice, I had received a lasting impression that the Judiciary Act of Georgia, in 1799, had preceded, by a long period, Lord Brougham's great efforts for Law Reform in England . . . yet, not until I read your lecture has this impression been made so distinct and intelligible. It only confirms, however, the pride that I have always had in you from your

boyhood up to the present moment. The Lamars of Georgia were always men of marked character. In the early days, when they were at the zenith of their popularity and influence, they were remarkable for their probity, frankness, hospitality, and that sort of rugged courage which always made its way and its impress upon newly formed communities. But you and your father are the only ones of the family that I ever knew, who, with the increasing progress of civilization evinced an aptitude for minute, accurate and exact knowledge, with a capacity for original investigation and pure subtlety of intellect . . .”

When this paper was written the laws of Georgia had been codified four times; in 1863, 1868, 1875 and 1882. Thus, ten years had elapsed since the last codification. In the following year, 1893, the legislature of Georgia adopted a bill creating a commission of three lawyers to be chosen by the Governor and the Justices of the Georgia Supreme Court, to make a complete revision of the current code. The author of the bill was the Honorable William H. Fleming, who had been Lamar's opponent in the legislative race of 1886. After he had secured the passage of the Act, Mr. Fleming wrote to Lamar urging him to apply for appointment as one of the codifiers, and promising him his hearty support. But although appreciating the honor of such an appointment and the opportunity for valuable service which it offered, Lamar

declined to oppose certain of his friends who were seeking the position. This proved, however, to be one of several occasions on which, after having declined to seek an office, the office sought him. For on Christmas Eve, 1893, he was appointed one of the three Commissioners.

The appointment was a distinction for the choice was made without regard to politics, and Lamar was so much younger than the other two Commissioners that the *Augusta Chronicle*, in announcing the appointment, said:

“To have been chosen by the Governor and the members of the Supreme Court as one of the three men best qualified among the lawyers of Georgia for this important work is a compliment, in itself, of no small character. To have been selected from the entire Bar of the State and put into harness with two other lawyers who were prominent in Georgia when Mr. Lamar was a boy at school, is a recognition of his ability and worth and an evidence of the strides he has made in his profession which Mr. Lamar’s friends in Augusta are delighted to see accorded to him.”

The bill creating the Commission directed it, as a part of its duty, to separate the Civil from the Political and Penal Codes, and to include not only the statutes passed since the last revision of the Code, but also the laws as announced by the decisions of the Supreme Court of Georgia. The

new Code would therefore consist of three volumes: The Political Code, the Civil Code and the Penal Code.

The Commission held its meetings in Atlanta, and Lamar went to the first one in an humble frame of mind, content to accept any share in the work which might be given him by his older and more experienced brethren. He returned as radiant as a schoolboy who has gained an extra holiday, because to him had been assigned the preparation of the Civil Code; which was not only larger than the Penal and Political Codes combined, but which would include the bulk of the new laws to be introduced. This would mean not only the revision and re-arrangement of the Civil Code of 1882, then of force; and the addition of all the statutes passed since that codification; but also the codification of the laws resulting from the decisions of the Supreme Court of the State, or what has been called "Judge-made law." It was a most responsible, as well as an arduous, task, but one which was entirely to Lamar's liking. One of the other commissioners had chosen the codification of the Political and Penal Codes, and the third, the annotations.

The preparation of the Civil Code was a serious undertaking, and was made doubly so by Lamar's methods. It was his way to do everything for himself; to leave nothing to chance; and to go over his work again and again until it was as nearly perfect as he could make it. He passed in review

every word of every line of every section of the current code; he re-arranged the sections, combining or dividing them; simplifying and clarifying them. He included, in their proper places, all the statutory laws adopted since 1882. He scrutinized the Supreme Court decisions for new sections, or for changes in the old. When he found a lack or an ambiguity, he sought for a remedy. The legislature was in session, and he drew up a number of bills which were designed to correct the errors and omissions which he discovered. These he sent to State Senator, Bryan Cumming, of Augusta, to be introduced in the Georgia Legislature, and he pursued them in their passage through the committees of the Senate and the House and back again, until he had secured their adoption. Then he amended the Code accordingly.

One incident connected with the preparation of the new Code illustrates, not only his habitual caution, but his indifference to incurring personal expense in connection with any work that he undertook. It occurred to him to inquire as to the ownership of the copyright pertaining to the annotations and marginal references in the current Code; the right of copyright on the Code of 1882, being indispensable to the new one. He discovered that the copyright had not expired and that it belonged to the heirs of the last codifier. The representative of these heirs informed him that although this fact had been stated to one

of the other commissioners, no notice had been taken of it. Whereupon, Lamar bought the copyright on his own responsibility and at his own expense. This prompt action on his part probably saved the State from a lawsuit. He was subsequently reimbursed for the outlay, when the matter was brought to light by a State Senator who was charged with the duty of ascertaining the personal expense incurred by each commissioner in the performance of his task.

Before the new Code was printed the Georgia Legislature appointed a special committee to discuss, with Lamar, the new sections which he had codified from the decisions of the Supreme Court of Georgia. The committee was to make a report upon them to the Legislature. It brought in a favorable report—too favorable—Lamar thought. He wrote to his father on July fifteenth, 1895:

“ . . . I did not see the allusion to the Code, or to the report of the Committee, and did not know that anything had been done by them . . . I am sorry to hear that they have classed it as nearly perfect, because I feel sure that it is far from that. I would like to have two or three more years on it myself. The change in the arrangement, I think, has given general satisfaction, and will make the book more useful and convenient; but the task of getting everything in, and noting the almost infinite number of changes and variations which it may occasion, is an im-

possibility. How many I have overlooked will begin to appear when the one-hundredth volume of Georgia Reports is published, and the omissions and incorrect additions have been discovered by some lawyer whose client's life, liberty or property hangs on the result and who goes to work and digs up these errors. I shall never count myself out of the woods until the book has stood a practical test in the court house."

The new Code was adopted, in manuscript, by the Georgia Legislature that year, and is known as the Code of 1895. But the preparation of the index caused a delay in its publication. Lamar, nothing loath, improved the opportunity to make still further revisions, and additions to the text. He brought the Code up to date by including the acts passed during the current session of the legislature and then proceeded to rearrange and simplify the State military laws. "I have made a hasty examination," he wrote Mr. Cumming, "and do not pretend to speak accurately, but I think I am entirely within bounds when I say that the bulk of our military laws are as great as, if not greater than, the Army laws contained in the Revised Statutes of the United States. We have laws long and cumbersome enough to run the combined armies of Europe, and if there is any mortal man who knows exactly what they all mean, I would be glad to have the pleasure of his acquaintance.

"W. W. Gordon, Jr., Esq., of Savannah, has

prepared a very valuable State Military Code."

Two years later, occurred the first of those tests to which Mr. Lamar referred in the letter quoted above. In 1898, the Central of Georgia Railway brought a suit<sup>1</sup> in which the attorneys who represented the railroad argued that the new matter introduced into the Code of 1895 was unconstitutional, because it was adopted as a whole by Act of the Legislature. The Supreme Court of Georgia sustained the constitutionality of the new sections in what was held to be a very able opinion delivered by Judge Lewis. In a footnote to the decision it is stated:

"Knowing that the Honorable Joseph R. Lamar was one of the codifiers of the Code of 1896, and had doubtless given some of the matters involved in this case consideration, we requested of him his views touching the constitutional question raised. To this he generously responded by furnishing us with an able and thorough brief, which has been of great assistance to us in this work."

The result of the work of the Commission—the Code of 1895—consists of three volumes. The Political Code contains 1801 sections; the Penal Code, 1277; and the Civil Code, 4895 sections. In the Memorial to Lamar, issued by the Supreme Court of the United States, there occurs this paragraph in reference to his work on the Code of Georgia:

<sup>1</sup> *The Central of Georgia Railway Company v. The State*, 104 Ga. 831. The footnote is found on page 856.

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“In the division of the work of the Commission, revision of the Civil Code was assigned to Mr. Lamar. The scheme of the original Code embodied the Statutes of the State, and common law principles, in sections clearly and briefly expressed. Mr. Lamar completed the Code to date, adding all material furnished by decisions of the Supreme Court. The manner in which he did this work classes him as one of the most capable of civil code authors.”

In 1898, the Georgia Legislature created a Board of Law Examiners for admission to the Bar of Georgia, and Lamar was appointed a member of the Board and served until his appointment to the Supreme Court of Georgia. Upon his retirement from the Georgia Bench, he was made Chairman of the Board and held this position until his appointment to the Supreme Court of the United States.

But, in spite of the demands of a large and growing practice, and of the service that he rendered in so many capacities to his city and his State; in spite of special labors such as his work on the Georgia Code, Lamar found time for constant reading on a wide variety of subjects. He knew the literature of his own profession as few men knew it, and while he was a young attorney he began making a collection of the Georgia Acts from the first statutes issued in the Colony down to his own time. The earliest laws were published,

"when printed at all, on separate and unbound sheets." He was told by second-hand dealers that it would be impossible to find the original publication of the statutes for all the years prior to 1820. But he persisted in his search, finding odd copies from time to time, until he had secured the Sessions Laws for all but one year. In 1912, "by the merest accident, he found a copy which the owner would not sell but was willing to exchange." He had the complete collection <sup>1</sup> bound and presented it to the Georgia Supreme Court "on two conditions. First, that nothing be said of it in the papers and next that the books should be kept in the library of the Georgia Supreme Court." He made the second request as a measure of precaution, because "a number of the pamphlets between 1799 and 1820 could not be replaced—even the Congressional Library at Washington having been unable to secure the Acts for one year of that period."

He was particularly interested in collecting everything that related to the early history and literature of his own State. For many years, he was gathering material for a life of Oglethorpe and a history of the bench and bar of Georgia. He delved into all the original records that were

<sup>1</sup> When Justice Lamar presented the set of Georgia Acts to the Georgia Supreme Court it was more nearly complete than any other set in existence. The De Renne Library at Wormsloe, near Savannah, now contains a complete set of Georgia Sessions Laws, including one or two originals of which Justice Lamar could only obtain *facsimiles*.

available. He overhauled the minutes of many ancient Boards of Trustees. He examined the files of old newspapers, tracked forgotten documents to their hiding places, and traced old letters and papers to their cover in the British Museum and in Lambeth Palace, where he had copies of them made. The *Life of Oglethorpe* he did not even begin, his own life was cut short too soon. The material that he collected for a history of the judiciary of Georgia was used in preparing a series of historical papers and sketches which constitute a valuable addition to the legal literature of the State.

These papers are as follows:

- “Georgia’s Contribution to Law Reform, 1892”
- “Georgia Law Books, 1898”
- “A Century’s Progress in Law, 1900”
- “The Work and Position of American Courts, 1902”
- “A History of the Establishment of the Supreme Court of Georgia, 1907”
- “A Memorial of Judge Logan Edwin Bleckley, 1908”
- “A Sketch of Eugenius Aristides Nesbit, 1908”
- “A Sketch of Howell Cobb, 1910”
- “The Bench and Bar of Georgia in the Eighteenth Century, 1913.”

The first three and the fifth, sixth and ninth of these papers were read before the Georgia

State Bar Association. They may be found in the printed reports of the Association for the years 1892-1898-1900-1907-1908-1913. The fourth is printed in the report of the Alabama State Bar Association for 1902. The sketches of Eugenius Aristides Nesbit and of Howell Cobb appear in the fourth volume of *Great American Lawyers*<sup>1</sup> and in the third volume of *Men of Mark in Georgia*,<sup>2</sup> respectively. The sketch of Judge Bleckley is also printed in the fourth volume of *Men of Mark in Georgia*.<sup>2</sup> A footnote to this sketch states that:

“Judge Bleckley requested that Judge Lamar should prepare the sketch of his life for this volume, and the foregoing was written in 1905, during the lifetime of Judge Bleckley. He died at Clarksville, Georgia, on March sixth, 1907.”

The sketch was read before the Georgia State Bar Association in 1908.

It has been said of these papers that each is worthy of a place in the curriculum of every law school in the State. It has also been pointed out, in the report of a committee appointed by the Supreme Court of Georgia, that the honor due him for these treasures is increased by the fact that they were given without any thought of pecuniary reward, but from love of his State and profession.

The address on “Georgia Law Books” is full of illustrations of the quaint and curious character

<sup>1</sup> The John C. Winston Company, Philadelphia, 1907.

<sup>2</sup> A. B. Caldwell, Atlanta, Georgia, 1911.

of the early legal literature of the State. It throws an interesting light on the condition of the Colony. The dangers that beset its citizens were shown by the fact that:

“In 1766 it was enacted that, ‘if any male person should attend Church without carrying with him a gun, or a pair of pistols in good order and fit for service, with at least six charges of powder and ball, or shall fail to take such gun or pistol with him to his pew or seat, he shall be fined six shillings.’ (Watkins, 157.)”

There is an interesting account of the fee system in the youthful colony, which:

“With a population smaller than many of its counties today, provided . . . for fees for the Governor, Secretary, Clerk of Council, Messenger of Council, Doorkeeper of Council, Messenger of the Upper House, Clerk and Messenger of the Common House, Chancellor, Master in Chancery, Register in Chancery, Solicitor in Chancery, Chief Justice, Attorney General, Clerk of the General Court, Clerk of the Crown and Peace, Provost Marshall, Judge of Admiralty, Marshall of Admiralty, Register of Admiralty, Advocate General, Public Treasurer, Powder Receiver, Coroner, Comptroller, Notaries, Auditor General, Clerk of the Church of England, Sexton, Crier of Court, and our old friends the Justices of the Peace and Constables.

"Evidently, like some of our new regiments which consist altogether of majors and colonels, every inhabitant of the Colony had an office, and some of them must have had two . . ."

The paper on "Georgia Law Books" met with a very flattering reception. A small edition of it was printed, in pamphlet form, for private circulation, but it was soon exhausted. At the close of the meeting, the author was elected first Vice President of the Georgia State Bar Association, and at the following session, a year later, he was elected President. Two years later, in 1900, he presided over the Seventeenth annual session of the Association which met at Warm Springs, Georgia. At this meeting he read, as the President's Address, the paper entitled: "A Century's Progress in Law."

This paper would seem to be the logical successor of the one on "Georgia Law Books," which had unearthed and brought to light so many instances of the medievalism of the early laws of the State and Colony. But there was still another reason for the selection of such a subject. The meeting was held on July Fourth of the first year of the Twentieth Century, and was, as his opening sentence noted, "A Nation's Birthday ! A Century's Close ! A date that compels a look backward and challenges a comparison of the end with the beginning of the Century."

In view of the fact that, in 1800, there was

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practically no American law and that "English methods and English jurisprudence had been transplanted to these shores and were here flourishing," he illustrated his topic by imagining a Chief Justice of England who presided in 1800 as being "called from his long home and taking his seat on the Bench of the Superior Court of this County and allowed by courtesy to preside for a time in this year of Grace, 1900."

Lamar described the astonishment of the old Judge at the amazing changes in the law which were forced upon his attention as case after case came up for trial.

There happened to be a prominent member of the Tennessee Bar in the audience when this paper was read. At his suggestion, Lamar was asked to repeat it at the State Bar Association of Tennessee. He was a guest of the Association at Lookout Mountain in July, 1900, when the address called forth as much approval as it had done in Georgia.

Two years later, in 1902, Lamar delivered the principal address at the Twenty-fifth Annual Meeting of the Alabama State Bar Association, at Huntsville, Alabama. He read the paper called "The Work and Position of American Courts," which is one of the most interesting in the series.

"The Anglo-Saxon race, [he said] has had no law-giver. Solon gave laws to the Greeks and Moses to the Hebrews. Justinian made a code

for the Roman world and Napoleon one for Continental Europe. But our law bears no man's name. No man made it. No man has codified it. All the people and all the years have contributed to its excellence. . . . Whence this body of every-day law for which, despite its immensity and importance we have never found a satisfactory name? . . .

"Fortunate is it that the great body of the law, by which our rights are mainly determined and our civic bodies governed, is that serene, impersonal, unpartisan law, discovered and declared in the spirit of righteousness, and with the sole purpose of administering justice . . . This great body of the law . . . has been discovered and declared by the courts, formulated and preserved in decisions. . . .

"And with the rolling years, the character of the cases submitted to the courts constantly grows in importance. The first decision of the Supreme Court of the United States declaring invalid an Act of Congress, was trivial in the immediate issue involved. *Marbury v. Madison* decided whether a justice of the Peace could hold his commission. In the ensuing years the magnitude of the questions has become colossal. The 'Legal Tender Cases' brought in question the whole financial system of our government. The 'Income Tax Case' involved figures so enormous that the mind is unable to grasp them . . . The Merger cases in which three sovereign northwestern States are

fighting the Northern Sureties Company, with thousands of stockholders and millions of capital, is a case greater than the courts of England ever had under review. When we consider the Porto Rico and Philippine cases, we have probably the most stupendous questions ever brought before a tribunal . . . It involved the treaty-making and war-making power of the government. It was the equivalent of the Court of Kings Bench saying whether England could govern India, and if so, how . . .”

In 1907, Lamar was again invited to deliver the leading address before the Georgia Bar Association. He read a paper called “A History of the Establishment of the Supreme Court of Georgia,”<sup>1</sup> in which he explained a fact that was known to but few among his audience. He said:

“Georgia had been a State for seventy years before it had a Supreme Court . . . It was not accidental, but intentional and in pursuance of a definite public policy. It furnishes a rare fact in history, worthy of study by the student of political affairs . . . Nothing has been written of it, even in essay or pamphlet, nor can the facts be discovered without a careful winnowing of forgotten records. A line here, a line there; an extract

<sup>1</sup> This paper was printed in the *American Bar Association Journal* for July, 1924, through the courtesy of N. T. Guernsey of the New York Bar.

from the message of a governor; a passing remark in a decision; a sentence in a biography; and such like scarce and stray threads must not only be woven together, but pieced out by oral tradition. . . .”

Incidentally, in this paper, the author admits us into his workroom; shows us his methods of investigation and compilation; the historical laboratory in which his papers and addresses were prepared, just as, in his legal workroom his briefs and arguments were built up.

In later years he was obliged, though reluctantly, to decline many invitations to address the bar associations of his own and other States. But in 1913 he yielded, quite as much to his own desire as to the urgent request of the Bar Association of Georgia, and read a paper before the thirtieth meeting of the Association at Warm Springs, Georgia.

The address, as he explained in the introduction, “was intended to be printed, and not for oral delivery.” And it is purely historical in its subject matter. Among other things, the paper gives an account of one of the first acts of Oglethorpe in the founding of the youngest of the Thirteen Colonies.

“Shortly after their arrival Oglethorpe determined to commemorate the founding of Georgia by opening court. Accordingly, on July seventh,

1733, the settlers met on the Bluff, the Commission was read, the Magistrates were inducted into office, court was opened, the first Georgia jury was impaneled and a case was tried . . . Thus the first public event in Georgia was a judicial function. And July seventh was long celebrated in the Colony as 'Anniversary of Court Day.' . . . The Court thus so strikingly inaugurated was furnished with accompaniments most surprising for a tribunal in the woods of a new settlement. The judges were supplied with 'purple gowns trimmed with furr,' and the Trustees purchased a 'copper-gilt mace,' costing the equivalent of five hundred dollars, and a seal costing one hundred and fifty dollars, or, together, five times the value of the log house in which the court was held."

These addresses, taken as a whole, might bear the title, "The Reign of Law." A strong and persistent note runs through them, bringing out, as by a powerful searchlight, the growth and development of law in the Colony of Georgia and in the United States of America, and its supreme authority in the nation. Not kings nor parliaments, nor even the people directly, can be said to reign in America. It is only the people's will, as expressed in the laws which they make for themselves, which is supreme.

## CHAPTER VI

### AN OLD FASHIONED ATTORNEY

AMONG Mr. Lamar's papers is a letter written in 1898 to a friend to whom he had given Campbell's *Lives of the Chief Justices of England*, in which he says:

"In my reading of these books, I was far more interested in the biographies so far as they treated of the men as lawyers and judges than as statemen, and I have often been struck by the fact that the books which have been written of most great lawyers frequently pay more attention to their lives as politicians. The life of a lawyer, pure and simple, has rarely been written, and yet it seems to me that such a theme could be made most entertaining and instructive."

This letter may well give us pause. How would he have written of his own life as a lawyer? We know that he loved the law, both in the abstract and the concrete; that the working up of a case, the hunting down of a legal proposition, excited and stimulated him as a day with a dog and a gun stimulates a sportsman. But how can we

portray his eager interest in these questions, or make the reader understand the way in which he met and mastered them?

We have his printed briefs, for which other lawyers so often asked. But we cannot picture, from a brief, the scene before him as he rose in court, or describe the way in which he delivered his arguments. His briefs are the skeletons which he clothed with his vivid speech, his clear reasoning, luminous illustrations and convincing citations. In our hands they are but skeletons. How can we make these dry bones live? There are also the newspaper accounts of the trials in which he took part. But they were printed, as a rule, because of the local interest in the trials themselves and not because they illustrate his method of conducting a case or show his legal insight in its most favorable light. Only occasionally do we find among them a passage like the following from a Savannah newspaper<sup>1</sup>:

“Judge Lamar was at his best and held the attention of the Court and spectators with his splendid conception of the law as it related to the case. Above Judge Lamar’s logic and his law, however, was the impression created by his delivery of the address to the Court. Technicalities seemed to fall away from the statutes at his comment and gesture, and the language of the law became very beautiful in his expression of it.”

<sup>1</sup> *The Savannah Morning News* for October 27th, 1909.

At the time when Mr. Lamar was called to the Bar, the legal practice, in cities like Augusta, was not specialized as it has since become in even smaller places. In those days, the lawyer was both a barrister and an attorney. He got up his own facts, made his own brief, verified his citations, and looked to every point himself. His practice, for that reason, was interesting and stimulating.

Very early in his career, Lamar, in common with most successful lawyers, found that his practice tended away from the court house. He used to say that the trial of cases interfered with his business. But once a case was submitted to him, it was interesting to see his preliminary study of it. He carried it about with him for days, before he opened a law book; slept on it; talked and pondered over its issues until his mind was thoroughly steeped in it. Again and again, in preparing for a trial he would take up some branch of study with which he was unfamiliar, buying the best authorities on the subject and going to school, until he knew it thoroughly. If it were a question involving modern and complicated methods of bookkeeping; the quality and price of lumber; the effect of certain chemical reactions; or the voltage and amperage of the electric current, he mastered the subject as fully as he could and grew deeply interested in it as a study and apart from its connection with the case in hand. It was a favorite theory with him, that a lawyer must,

necessarily, be one of the best informed and most widely educated of men, since his practice carries him into almost every field of human activity.

When it came to collecting the evidence in a case, it was not his habit to ask many questions. He let the witness talk. He was never impatient. Sometimes he would guide the current along a special channel, but the result was always the same. In the end he had all the information that the witness possessed. In weighing and sifting the evidence submitted by the opposition, his methods were as thorough, and he had an almost uncanny way of getting at the facts. His friends remember a case in which a witness for the opposition was prepared to testify that he stood at a certain corner at a stated hour and saw committed the crime for which Lamar's client was on trial. Lamar had his own reasons for doubting the veracity of this witness, but there seemed to be no way of disproving his testimony. In casting about for evidence to use in rebuttal, he wrote to the United States Weather Bureau and learned that there was so dense a fog at the time and in the place in question, that it would have been impossible to recognize any one's identity at much less than the given distance. Armed with this information, duly authenticated, he cross-examined the witness; allowing him to fix his position, the exact time by the clock, the distance between himself and the participants, and finally to describe in detail the commission of the crime.

Then he brought the fact of the fog before the jury, and easily won a verdict. Doubtless other attorneys had resorted to similar expedients before Lamar made this use of a report of the weather bureau, but nothing of the kind had come to his knowledge when it occurred to him to try this method.

When it came to looking up the law in a case, there was no limit to his industry or to his skill in finding a way to shed light upon an obscure point or to break through a legal impasse. His ingenuity was illustrated in his conduct of a case in which a passenger sued a railroad for an injury received during a journey. The case had been tried and lost when Lamar was employed in it; a second suit against the road was barred, and the limit of time had expired during which a suit could be brought for a personal injury. The situation looked hopeless. But it happened that the road in question was leased by another railroad company, and Mr. Lamar proceeded against the lessee claiming that it was equally responsible with the lessor—and sued for a breach of contract and not for a personal injury. A suit against the lessee road was not barred by the previous trial. The time allowed for bringing suit on a breach of contract was longer than that provided, by the Statute of Limitations, in cases of damages for personal injury. He sued the lessee road for a failure to keep its contract to carry the passenger in safety to his destination. He proved the pur-

chase of a ticket, the making of a contract to convey the passenger safely to a given point. He proved the breach of the contract, established the doctor's bills and other expenses as damages, and submitted in his brief that, "Where the Code permits an election and the plaintiff elects to sue on the contract, he gets all the rights of a plaintiff in that form of action including the time within which the suit may be filed. The measure of damages is for determination on the trial." He won the case, and secured substantial damages for his client.

When a case came up for trial, his speech before the jury was easy, colloquial, abounding in familiar illustrations. He hammered his points home, with various weapons and by successive blows, struck from different angles, in new positions, and repeated, stroke on stroke. He acquired the habit of going over a point again and again, in order to reach, interest and convince the least receptive mind in the twelve. It is related of Gladstone that, on an occasion when he was about to make a reply in the House of Commons, he turned to his chief, Sir Robert Peel, and asked:

"Shall I be short and concise."

"No," was the reply, "be long and diffuse. It is all important, in the House of Commons, to state your case in many different ways, so as to produce an effect on men of many ways of thinking."

Lamar followed this method with marked success before a jury. But even more effective was the use that he made of familiar illustrations. Mrs. Lamar's scrap book contains a newspaper account of a trial in which the illustration was taken from the Bible. The case was one in which an office holder had been deprived of his office without proper notice, without a hearing, and without a trial. Lamar made the point that this was depriving his client of that "due process of law" which the Constitution of Georgia, as well as the Constitution of the United States, guarantees to every citizen. Some of the attorneys on the other side were inclined to take this argument lightly, characterizing due process of law as a "sonorous phrase which meant little and was adopted for want of a better argument." But they had occasion to change their minds as the argument proceeded. His defense was spirited and eloquent. The giving of notice before rendering judgment, he held, "was an inherent quality of justice and sprang naturally from the human heart." When the Apostle Paul was bound with thongs at Jerusalem and was about to receive the lash of the Roman guard, he had entered the same plea. He demanded of the centurion, who stood near: "Is it lawful for you to scourge a man that is a Roman and uncondemned?" Lamar closed his argument with the question: "Is it lawful to punish a Georgian, uncondemned?"

But there was more in his jury speeches than

the arguments themselves. The man behind the speech gave weight to his words. He inspired confidence. It was said of him, in later years, in an editorial in one of his home papers, that there were many persons in Augusta who would say, when they learned that Lamar had passed upon a title, or advised on a question of law, "Well, that is sufficient, I can afford to stand by his opinion."

One of his colleagues in the Georgia Legislature<sup>1</sup> mentioned, not long ago, that at roll call in the House, he always listened, after his own name was called, to see how Lamar would vote. "If he voted as I did," he said, "I was perfectly satisfied. But if his vote was opposed to mine, I always had my doubts as to the correctness of my position."

A further illustration of the confidence he inspired is found in a story which used to be current in Augusta, and which sheds a curious light on our system of trial by jury.

He was trying a case in which he thought the result was a foregone conclusion. It was an "open and shut" case, which he could not lose. Nevertheless, while the attorney on the other side was making his argument, Lamar went carefully over in his mind, what he intended to say; walking up and down in the rear of the Court room, his hands in his pockets, fingering some loose coin, his head bent, his eyes on the floor, as was his habit when

<sup>1</sup> The Honorable Price Gilbert, of the Georgia Supreme Court.

preparing to speak. When the argument of the opposing counsel came to an end, Lamar made his reply, the judge charged the jury and the men retired to consider the case. Presently, to every one's amazement, they returned with a verdict for the other side. This was so extraordinary that one of the interested spectators afterwards asked the foreman to tell him how the jury had conducted its deliberations:

"Oh, that case," said the foreman, "well, you see, I saw right away that there was nothing in it. Mr. Lamar didn't care anything about it. All the while that other lawyer was talking, he was walking up and down at the back of the room, talking to himself. He didn't listen to what the other lawyer said."

And feeling that they were at liberty to follow their own inclinations, the jury had brought in a verdict in favor of the man they liked the best.

In this instance Lamar paid a penalty for his apparent failure to attend to the argument of the opposing counsel. But this was exceptional. He had a reputation at the bar, for the invariable courtesy with which he treated both the opposing counsel, and the client on the other side, in every case that he tried. This comment by a prominent lawyer <sup>1</sup> speaks to the point: "As an antagonist he was always formidable, for he was always prepared, but he was always delightful.

<sup>1</sup> Honorable William G. Brantley of Washington, D. C.

His courtesy was disarming. He was always fair and neither sought, nor would he have, any mean advantage."

Another tribute from a different source was that of a man whom Lamar had prosecuted, and who was convicted of a criminal offense; a man of birth and breeding, who had yielded to an overpowering temptation. After the trial was over, he thanked Lamar for the manner in which the case had been conducted, for the consideration shown for him and for his family in everything that was said and done; and told him how relieved they had been when they heard that he was employed in the case, for although they knew that his conduct of it would be unsparing, they were equally well assured that it would never be discourteous.

Lamar was of counsel in most of the important cases in his own section, and so often on the prevailing side that an observing young friend once asked him, with unconscious flattery, "Mr. Lamar you only take the cases that you know you are going to win, don't you?" A compliment as much to his well known caution as to his skill, since he rarely allowed a case to come to trial unless there was a fair chance of success.

He had his share of success before the Supreme Court of the State. There was, however, an occasion when a series of reverses had plunged him into the gloom that was his habitual refuge after any failure. Meeting Major Cumming on the

street he began to deplore these mishaps. The Major stopped him by saying that it was high time that there should be some interruption to his invariable success before the Court.

But while Lamar was usually successful before the Court or a jury, it was his office practice, his consultations with his regular clients and the advice that he gave them which formed the bulk of his business. His attitude toward them was that of a trustee, or guardian, or something like that of an old-fashioned family physician toward his patients. They came to him for counsel and direction in all of their affairs, and his interest in them was personal as well as professional. To settle disputes out of court; to advise his clients so that they would avoid difficulties; to effect compromises—very often, it must be admitted, by putting his own fee into the scales to tip the beam in his client's favor—these were his chief concern. Justice herself was not more blind than he was to his own financial interests when he saw a chance for a settlement.

He devoted much thought to the preparation of certain carefully worded provisions which he included in every business contract that he drew. These phrases often saved his clients from subsequent litigation. His supreme interest was in the work itself, not in what he was to get out of it. It was commonly said, in the days when he was a practicing attorney, that a successful lawyer made a good living, but accumulated no for-

tune; and in his case the reason was not far to seek.

A client once came to him in great distress because he had lost the note for a sum of money due him, which, he said, would never be paid if he could not produce written evidence of the debt. Lamar dictated a letter for his client to send to his debtor in which he referred to the obligation, slightly augmenting the amount due. The maker of the note sent back an indignant denial to the effect that he *only owed so much* and not the larger sum with which his creditor unjustly charged him. After this admission no suit was necessary to recover the debt.

His friends often told Lamar that if there were no other way of evading a fee, he would find a conscientious scruple to serve his purpose, and his letter books furnish more than one example. He writes to the President of a bank of which he was a director, declining, on that account, to accept a fee for legal services. He had not told his partner of his scruples, and if the Bank President would send him half of the fee charged, he would hand it to his partner as his half, and say nothing of the balance. He requested the President, therefore, not to speak of the transaction. This letter throws an illuminating light on Lamar's character. No one was ever more punctilious than he, as to all questions of propriety in the practice of his profession. Yet he was willing that his partner and other lawyers should suppose that

he had accepted a fee in this instance so long as he was himself conscious of having fulfilled his own ideas of professional ethics.

There is a letter to a client whose means were limited, explaining that his case had been settled by Lamar's abating his fee. Another attorney, who was also engaged in the case, was not to be told of this arrangement.

It is evident that the letters which furnish the best illustration of his generosity toward his clients cannot be given here. But there is a sentence in a letter which he received from the opposing counsel in a case in which his own interests were involved, which tells its own story:

“Mrs. A. told me she would write you a letter herself . . . But I cannot refrain from adding my own thanks to you as a friend of my client. Not one man in a thousand would have acted as fine a part as you have done in this matter.”

Lamar did a great deal of gratuitous practice, and he knew how to be most considerate of the feelings of his clients in such cases. “I have your letter,” he wrote to one of them, “and regret that you entirely misunderstood me. My reason for declining to receive the fee was not that it was too small a sum, but that I felt you could use it to far better advantage than I could, and I hoped you would allow the loan to remain in its present situation.”

But there was a limit to his forbearance. One of his clients—"a certain rich man"—endeavoring to trade upon his well known liberality, complained of the amount of a fee charged. Whereupon Lamar sent him a receipted bill and politely begged that he would do him the favor of accepting his services without charge. Needless to say the bill was paid.

Lamar's relations with other members of the profession were not only friendly but delightfully cordial. "Dear Boykin," he writes, "You cannot take advantage of me in this way. I was not present at the time of the division, but I can protest immediately against your excessive generosity. Neither by custom among lawyers, nor by anything done, nor the value of services, am I entitled to share equally in the —— case fee. I insist upon making the division myself and return here-with my check, leaving me even more than a liberal slice in the division."

In his *Life of John Marshall*, Mr. Beveridge speaks of the fleeting nature of the fame of even the greatest lawyers. And, in contrasting the reputation of a judge with that of a lawyer, an eminent attorney of Augusta, Major Joseph B. Cumming, once said:

"However brilliant, however successful the latter may be, the things that make him successful are hid away in file cases and buried among the papers of his clients. The things which showed

him brilliant are thrown upon the air in great speeches effective for the occasion and applauded for the moment, but wafted away on the passing breeze."

The reputation of a lawyer is not only one of the most evanescent forms of fame, but it depends almost entirely upon hearsay evidence. At best, the lawyer's audience in the court room is small, and it is not always discriminating. And often his greatest triumphs are won at his desk. In the end, his fame rests upon what men say of him. In Mr. Lamar's case there is fortunately no lack of testimony from the attorneys with whom he was associated while he was practising at the bar. Senator Hoke Smith, of Georgia, said:

"As a practitioner at the bar, Mr. Lamar had few equals. He was always thoroughly prepared, the entire master of the case in hand. Whether discussing law or facts, before court or jury, he was clear, brilliant, logical, convincing. When you opposed him you felt his power, but appreciated his courtesy and perfect fairness. When associated with him there was a sense of relief. You would be certain that his part of the trial would be splendidly sustained, with never the possibility of blunder."

"I deem his the largest capacity and the most loveable nature possessed by any man I ever

knew," said another member of his profession who knew him well.

But the most striking tribute to his ability as a lawyer, as well as a judge, was his appointment by President Taft to the Supreme Court of the United States. And this tribute lay not alone in the fact that the President appointed him, although he was a Democrat. The President was looking for a Democrat. For many years, the Court had consisted of six Republicans and three Democrats, and the death of Chief Justice Fuller had left only two of his political faith on the Bench. The great compliment to Lamar's ability was the fact that he was the one Democrat whom the President selected among the many who were so eminently qualified for the position. And it was the more pronounced because this appointment was made, although the Fifth Judicial Circuit, from which Mr. Lamar came, was already represented in the Court.

There is still other testimony, on record, to his standing as a lawyer in connection with his appointment to the Supreme Bench. While his name was under consideration, the Attorney-General, at President Taft's request, made inquiry of a number of well known lawyers at the North and at the South, as to Judge Lamar's qualifications. The President stated to Senator Bacon that he did not require any assurance as to Judge Lamar's personality, his standing, or his character, but that he wished to be informed, by those who knew,

of his ability as a lawyer. The replies to these inquiries were given seriously, knowing that they would have weight with the President. Only a few of these letters are available, but their tenor may be inferred from the fact that the inquiries were sent out on December the sixth, and that six days later, on the faith of the replies, the appointment was made. Or, as Senator Bacon remarked, "The result was accomplished by the general consensus of opinion of all who knew him, of his entire fitness for the position."

Mr. Lawton of Savannah wrote:

"He is the best lawyer in Georgia. He loves the law, not the practice of it, but the law itself—for its own sake and for the sake of the truth and justice which it represents. He is a profound and learned lawyer, a student and a scholar."

Alexander Hamilton, of Petersburg, Virginia, replied: "I know well Judge J. R. Lamar, and know no one better qualified by ability, learning, temperament, personality and character for service on the highest court."

Among the replies was one from Major Cumming, of Augusta, who sent the following telegram:

"In the symmetry of Lamar's make-up, I do not know which most to commend, the man or the lawyer. His present learning is vast; his faculty for acquiring more, remarkable. If I were

called upon to construct a model for a judge, I would take Lamar as he is, only chipping off somewhat of his too painstaking search for finality of proof, which sometimes keeps him reaching out beyond the seemark where other excellent judges would be willing to drop anchor."

His weapons were: Preparedness—the most thorough mastery of his case that a good mind and laborious study could produce. Honesty—he would not seek, nor would he take "a mean advantage." Fairness—and more than fairness; a delightful, disarming way as an antagonist, that was a matter of personality.

## CHAPTER VII

### THE SUPREME COURT OF GEORGIA

ON New Year's Eve, 1902, the Lamars were having a party for young people at the house on Greene Street. In the midst of the entertainment Mr. Lamar was called to the telephone, and Governor Terrell, speaking from Atlanta, said that he had appointed him a Justice of the Supreme Court of Georgia.

Had he been told that he had been made Attorney General of the United States Mr. Lamar could hardly have been more surprised. For it was not known that a vacancy on the Georgia Bench had occurred, or was impending. A judicial election had been held in Georgia earlier in the year, and Lamar had received letters from members of the Bar all over the State urging him to run for the Judgeship and promising him their hearty support. But he had declined to enter the race, although a seat on the Supreme Bench of his State was among his cherished ambitions.

Governor Terrell explained, over the telephone, that when he had been elected Governor of Georgia he had promised himself that, if a vacancy occurred on the Supreme Bench during his term of office, he would appoint "Joe Lamar." Judge

Little, a member of the Court, had decided to retire at the end of the year, and Governor Terrell had asked him to withhold the announcement of his resignation until his successor had been appointed, and had accepted the office.

When this small bomb shell exploded in their midst, the Lamars decided to keep the news to themselves until the party was over. But next morning the *Augusta Chronicle* carried the fact in staring headlines. Telegrams and letters of congratulation began pouring in, and friends and neighbors came to bring their felicitations in Augusta's own, friendly way. Some of them came also to protest against his making the sacrifice that it entailed; the parting from his home and friends in Augusta, endeared to him by so many associations, to say nothing of the financial loss involved. For, in spite of the "Waterloos" of which he complained, his practice was lucrative, while the judges of the Supreme Court of Georgia were both overworked and ill paid.

Judge Lamar's duties on the Bench began at once and he found them most satisfying. He enjoyed the "serene atmosphere" of the Court. Its members were congenial. One of them, Judge Cobb, was his cousin and his intimate friend. And he enjoyed the gratification of his appetite for work; his freedom of mind in applying the law; the pleasure of studying a case—not to earn a fee or to convince a jury—but to decide, impartially, what was the law. Someone said of him:

“While upon the Supreme Bench of Georgia, I heard him say that he was afraid to admit how much he enjoyed his work.”

The Lamars were cordially welcomed in Atlanta. The Judge was no stranger to that progressive city. For no matter where a lawyer may live in his own State, he always spends a portion of his time at the Capital. Lamar’s service in the Legislature, and as a member of the Code Commission, as well as his practice before the Georgia Supreme Court, had made him familiar with Atlanta. He had many friends there, and, in common with other Georgians, he was exceedingly proud of the Capital, and full of admiration for its amazing growth and prosperity and the fine civic spirit that characterized its citizens. But its narrow and crowded streets, and its hurrying throngs of people, were in sharp and alarming contrast to the broad thoroughfares and the more leisurely ways of Augusta. The Judge lived at a hotel, and his daily walk to the State House took him through one of the most congested streets of the city. One can imagine the impression that it made upon a man of his absent-minded habits. After barely escaping destruction in an attempt to cross one of the main business highways, he gave it as his well considered opinion that “it was contributory negligence for a man to live in Atlanta.”

During the two years that he sat upon the Georgia Bench, Judge Lamar rendered more than

two hundred opinions. They may be found in the Georgia Reports in volumes one hundred and seventeen to one hundred and twenty-two. There were several reasons for the large volume of work performed during that time by the Supreme Court of Georgia. There was then no limit upon the suits that might be appealed to the Court, either as to subject or the amount involved. The law required that every case submitted must be decided at the first or the second term after it was brought, or it would be affirmed by default. And, so far, the Court had never permitted a case to be thus affirmed. For these and other reasons, the Supreme Court of Georgia rendered more decisions during the two years when Judge Lamar was a member, than were delivered, in the same period, by the Supreme Courts of Virginia, West Virginia and the two Carolinas.

Although Lamar was of a judicial turn of mind, he never wholly outgrew the lawyer's point of view. His opinions were brief, and he condensed and compressed into each sentence all that it could contain. But his reasoning was convincing, even to a layman. For he carried his ideas of abstract justice into his opinions, and he did not forget that a man's life or liberty might depend upon a purely technical question. Soon after he took his seat on the Bench, he rendered a decision in *Patton v. The State*, 117 Ga. 230, which illustrates his attitude toward such questions. The case was one in which a man named Patton

was convicted of murder on the testimony of one witness only, who swore that he recognized the accused by his voice. The murdered man had been shot during a 'possum hunt at night, when the light was too dim to recognize more than the outline of a form. The witness testified that he knew Patton but slightly, that he had spoken to him only "once for a few minutes and overheard his remarks in conversation with a neighbor;" that there was nothing unusual in Patton's voice by which it might be easily recognized. The voice that he had heard on the night of the murder had called out a question before the fatal shot was fired, and the witness admitted that he had never heard Patton's voice speaking above the ordinary pitch.

The Supreme Court of Georgia exists for the correction of errors of law, only; and it would have been easy for Judge Lamar to have avoided the responsibility of deciding an uncertain issue by relying upon the rule that where there is conflicting evidence and a jury has passed upon it, the Court cannot review their finding. But Lamar took a different view of the Court's responsibility. He said:

"Where the witness is acquainted with the accused he may be in a position to testify positively to his voice and thus identify the defendant. But where, as here, it appears that there was nothing peculiar in the voice; when the wit-

ness was not well acquainted with the defendant and had only heard him speak twice and that at a considerable period before the homicide; when he had never heard Patton halloo; the circumstances ought to be most propitious to entitle such evidence to any weight. But it is said that there was some evidence and that the jury having passed on the issue this Court cannot review their finding nor undo what they have done by their verdict of guilty. If there were a conflict in the evidence we certainly could not interfere. If there is a total want of evidence we must interfere. Between a total want of evidence and a conflict of evidence there is the debatable ground as to the sufficiency of evidence. The Court must determine, in each case, whether, in its inherent character, the evidence is sufficient to show, beyond a reasonable doubt, that the defendant committed the crime charged. . . . While it [the Court] cannot consider the credibility of a witness it must consider the nature and character of his testimony; whether it is in accord with natural laws or is improbable, incredible, or seeks to establish facts which are impossible; or which, if not impossible, must, in their very nature, be uncertain, vague, indefinite and insufficient to remove reasonable doubts. . . . What to our fathers was impossible is to us a matter of course; and while the circle of the possible daily enlarges, yet some things are unchanged and unchangeable. The great physical laws of the universe are

witnesses in every case, and cannot be impeached by the feeble voice of man, even though he be speaking under the sanction of an oath."

Contrary to the custom generally prevailing in the Court, Judge Lamar, in delivering his opinions, separated the statement of the facts from the opinion itself. The facts were given briefly, clearly, fully. Then came the decision with a satisfying note of finality, but, at the same time, showing the reasonableness, even the inevitability, of the judgment rendered. There is not the faintest doubt as to what the opinion means; and it is so stated that there is as little doubt, in the mind of the reader, that the opinion is right.

In *Davis and Company v. Morgan*, 117 Ga. 504, Lamar discusses the force of a promise given to pay money without a valuable consideration. He says:

"The section does not relate to the moral obligation which inheres in every promise. While all courts recognize the obligation arising from any undertaking, they are forced, from the necessity of the case, to hold that naked promises must depend, for their performance, solely upon the will of the promisor, and not upon tribunals which are organized to perform the 'duty of government to protect person and property,' and, in pursuance thereof, to award money damages for breaches of contract. But they cannot enforce

promises binding on the conscience, except in those cases where some pecuniary damage flows from the breach, or where, in addition to the moral obligation, the promise is also supported by a consideration. When one receives a naked promise, and such promise is broken, he is no worse off than he was. He gave nothing for it. He has lost nothing by it . . . no benefit accrued to him who made the promise, nor did any injury flow to him who received it."

In the case of *Linton v. Lucy Cobb Institute*, 117 Ga. 678, it was sought to tax a college on the ground that the buildings were used "for the purposes of private or corporate profit or income;" because tuition fees were charged. In the course of his opinion Judge Lamar said:

"Under the Constitution productive property is taxable, even though the income be used for charitable or educational purposes. But buildings used as a college may be exempt from taxation, even if, in the operation of the institution, income is derived from tuition fees. Tuition is a charge made for instruction, rather than as rent for the use of the buildings in which the instruction is imparted. . . . To say that the [Constitutional] Convention meant the exemption only for those institutions which might be conducted free of charge, was to say that it granted a privilege which no one could claim; that it

sought the cheap and ignoble reputation of offering what no one could take; that in order to gain the advantage of an exemption, these institutions had to sacrifice the greater for the less; surrender tuition fees—their main source of support—to secure the smaller exemption; and, in effect, should be forced to cut down the tree to gather the fruit."

In *Oliver v. Oliver*, 118 Ga. 362, he holds that:

"Where a director purchases shares from a stockholder at one hundred and ten, concealing the fact that there is a contemplated sale of the entire plant of the company which makes the stock worth one hundred and eighty-five, the concealment of such material fact entitles the shareholder to rescind the sale, or to other appropriate relief. . . . Courts are created for the enforcement of civil contracts, and are powerless to relieve against hard bargains, unless authorized to do so by some rule of civil law. . . . They cannot deprive one of the advantages which superior judgment, greater skill or wider information may give; nor can they be expected to enter upon an inquiry as to how the parties would have traded, if each had known the same facts; as—for example—the state of the crops, the conditions of trade, a declaration of war, the signing of a peace treaty, or any speculative matter, or extrinsic fact, of general or special knowledge. . . . And

this brings us to a consideration of the relation which a director bears to an individual stockholder. All the authorities agree that he is trustee for the company, and in his capacity, as such, he serves the interest of the entire body of stockholders. . . . But the fact that he is a trustee for all is not to be perverted into holding that he is under no obligation to each; the fact that he must serve the company does not warrant him in becoming the active and successful opponent of an individual stockholder, with reference to the latter's undivided interest in the very property committed to the director's care. A rule that he is not a trustee for the individual shareholder leads inevitably to the conclusion that while a director is bound to serve stockholders *en masse*, he may antagonize them one by one; that he is an officer of the company, but may be the foe of each private in the ranks."

In *Robison v. The State*, 118 Ga. 198, the appellant was a man who had killed another for speaking to him in opprobrious terms. Judge Lamar delivered an opinion, in the course of which he said:

"Words may justify an assault . . . but they do not justify a homicide. The tongue is neither a weapon likely to produce death, nor is it the legal equivalent of a blow. That words, threats, menaces and contemptuous gestures will

not justify the taking of human life, is as old as our common law."

In *Williams v. Crosby*, 118 Ga. 296, a suit involving the custody of a child whose parents were divorced, he said:

"In every case the welfare of the child is the controlling and important fact. This is not intended to nullify the laws of nature; for in most instances, it will be found that the legal right of the parent and the interest of the child are the same. But if, through misconduct, or other circumstances, it appears that the case is exceptional, and that the welfare of the child requires that it should be separated even from its parent, the *parens patria* must protect the helpless and the innocent. They are the wards of the Court, the hope of the State, and the seed corn of the future."

Lamar's opinions sometimes contain striking phrases. In *Owens v. Macon and Birmingham Railway Company*, 119 Ga. 230, a case in which a lunatic accompanied by a guard, was ejected from a train, he says, "On the one hand regard must be had for the safety and comfort of other travelers, and on the other, to the fact that, in losing his mind, the lunatic has not lost the right to be transported."

In *Harp v. Southern Railway Company*, 119 Ga. 927, these sentences occur:

"This suit was for wrongful expulsion and not for damages inflicted upon the plaintiff as a result of his being compelled to alight from a moving train. . . . Any rule allowing an excuse as a substitute for a ticket would give rise to so much uncertainty and so many possibilities of fraud, that the courts have uniformly held that the passenger must produce his ticket, pay his fare or suffer expulsion."

In *Cox v. Strickland*, 120 Ga. 104, he thus defines a trespass:

"Reputation is as much a part of the real man as an arm or a leg is of his body. Injury to the reputation is in many respects the legal equivalent of a battery upon a physical member. The fact that it can only be effected by the spoken word or written sign in no way destroys the legal complexion of the act. A man's body may be assailed with the fist, and it is a trespass; his character may be assailed by the tongue, and that too is a form of trespass, involving the use of that constructive violence which alone can reach so intangible an attribute of his personality."

In *McCarthy v. City of Atlanta*, 121 Ga. 365, the defendant, who was the owner of a saloon, admitted that it had been kept open after prohibited hours, but claimed that it was not for the purpose of selling liquor but in order that he

might enter to discuss a matter of business with the bar tender. Judge Lamar dealt with this defense as follows:

"If such an excuse could be given in one case, it could be in others; and the issue in each trial would be diverted from the question as to whether the place had been opened at an unlawful hour, into a consideration of the question as to whether it had been opened for an innocent purpose. It is manifest that any such construction would, in effect, repeal the law, and be utterly subversive of the very policy on which it was enacted. Hence all of the decisions of the State are based upon the idea that opening during the prohibited period is the gist of the offense, and that if the place be opened but for a moment, the statute is violated."

In *Wells et al v. Terrell Governor*, 121 Ga. 368, the defendant was charged with a misdemeanor punishable by fine or imprisonment. On the call of the case he was absent; but his authorized counsel offered to enter a plea of guilty. To the layman this would seem to be sufficient to satisfy all reasonable demands. But in rendering the opinion of the Court, Judge Lamar gave some illuminating reasons for the law's requirement that the defendant in a felony or a misdemeanor, must be present at his trial. He said:

"This formality is intended, among other things, to cut off all question as to misnomer, and

to identify the person on trial as being the one named in the indictment. Regularly this procedure requires the defendant to stand up, face the court and jury, and listen to the reading of the indictment. In answer to the clerk's inquiry whether he is guilty or not guilty of the offense charged, he orally makes his plea. This is not a mere idle ceremony, but furnishes a safe and conclusive means of identification. It permits the court, on the rendition of a verdict of guilty, to impose sentence and put the identified defendant into execution. To secure this important end it is therefore the State's right to have him present when the trial begins. Besides, this requirement prevents the prosecution from degenerating into the appearance of a mock trial before a moot court, with no one in apparent jeopardy. . . . The administration of criminal laws should not only be impartial, but equal, with privileges to none not accorded to all. If one defendant, or class of defendants, may be tried without being present, so could every other person charged with a misdemeanor. To allow this privilege to one or to all would be to rob the proceedings of that serious reality which serves a wise and useful purpose. This element of impressiveness was recognized as being so important as to furnish the basis for deciding the analogous question as to whether, at common law, one convicted of a misdemeanor could be sentenced in his absence."

The opinion in *Bazemore v. The State*, 121 Ga. 619, is quoted in full. It is short, and it illustrates Judge Lamar's style and the character of his reasoning. The opinion was rendered in a suit brought against a man who had bought seed-cotton without obtaining the written consent, which the law required, of the owner of the land upon which the cotton was grown.

"The right to be at large without the right to act would be but to live in a prison of extended bounds. The liberty which is guaranteed by the Constitution means far more than freedom from servitude. An integral and essential element is the right to use all one's powers of mind and body; to engage in any lawful occupation, upon such terms as he may choose, and to make contracts with other citizens who are as free as himself. Presumptively, every one may agree upon the terms on which he will sell his property or buy that of another. The right can only be limited and made penal by the necessity for preserving the public health, the public morals or the public safety, included in which would be the necessity for protecting the property of the public. Instances may be found in liquor laws; in statutes requiring the written consent of parents or friends before liquor or opium can be sold to certain persons; the requirements as to the inspection of fertilizers, turpentine, or flour; and similar statutes too numerous to mention. The Act

in question is in pursuance of the police power which includes the right, on the part of the State, 'to enact rules for the conduct of the most necessary and common occupations, when, from their nature they offer peculiar opportunities for imposition and fraud.' . . . Seed cotton, while an article of value, is not, ordinarily an article of commerce. Usually it is ginned and packed before being offered for sale. Even small quantities, however, are so much more valuable than similar weights of corn, wheat, oats, or other farm products, as to afford special temptation to petty larceny. When stolen from the field of the owner, it is almost impossible to be identified. It is therefore especially difficult to make laws relating to larceny—receiving stolen goods—effective in preventing the crime by punishing the thief. The evil is sought to be met by prohibiting the sale at night, or, as in the Act now under consideration, by requiring the written consent of the owner of the land on which it was grown, so as thereby to afford a means by which the property may be traced, and the thief punished, if it was, in fact, unlawfully taken. . . .

"To require the State to prove ownership, or to describe the land on which the cotton had been grown, would nullify the statute as completely as to declare it unconstitutional. There is no rule of pleading which requires a decision which would bring about such a result."

From the opening sentences of this opinion, one would infer that Judge Lamar intended to decide the question in a certain way; but, as he proceeds, he seems to argue himself into a different way of thinking. Judge Samuel Lumpkin once said of another of Judge Lamar's decisions:

"That was a fine opinion, Judge, but why did you back into it?" One is inclined to think that he "backed into" this.

The style illustrated in these opinions was not attained without effort, for he was trained from early manhood to speak *ex tempore* and that leads to diffuseness. In the judgment of his friends, he was more gifted as an extemporaneous speaker than as a writer. In early life, he was often called upon to speak on public occasions, and was usually successful; as he was, as a rule, before a jury. But, later on, he declined such invitations, and rarely spoke in public because, he said, he could only speak to men who were paid to listen to him.

In 1904, the year following Judge Lamar's appointment to the Supreme Court of Georgia, he was re-elected without opposition. But, as time went by, the work of the Court, congenial as it was, began to tell upon his health. He had labored as much, perhaps, when he was a practicing attorney, but the work had been far less confining and exacting. Before the Bar, his practice had been in different parts of the State, and in other States, and there was more variety in

the scene, as well as in the character of his work. For this reason, he began to consider very seriously, a return to the practice of law.

One other consideration had weight with him. The office of a justice of the Supreme Court of Georgia was an elective one and, on principle, Lamar was opposed to the election of Judges. He could not overcome his reluctance to making a political campaign. Still another reason, though he did not give it a name, was the fact that he was homesick for Augusta.

In the spring of 1905, he reached a final decision, and, on April tenth, he tendered his resignation. The regret expressed by Governor Terrell and by the Bench and the Bar of the State touched him profoundly. But most gratifying of all was the warmth of the welcome with which the people of Augusta met him on his return home. Not long after his return, he chanced to meet Dr. Williams who was for many years the beloved rector of St. Paul's Church at Augusta. Dr. Williams had recently moved to another city and Judge Lamar expressed the hope that his new home was not proving so attractive as to make him forget his old one. The Doctor replied,

“Judge Lamar, you lived in Augusta for many years and then left it, and you will understand what I mean when I say: *There is no other place!*” He did understand. For him there was no other place.

## CHAPTER VIII

### THE GEORGIA RAILROAD TAX CASE

LAMAR's life as a lawyer falls into three periods; from 1880 until 1890, when he was the junior member of the firm of Foster and Lamar; from 1890 until 1903, when he practiced alone, and from 1905 until 1910, when he was a member of the firm of Lamar and Callaway. The third period began after his resignation from the Supreme Court of Georgia, and, soon after this event, he was retained in what was perhaps the most important case that he ever tried. It was known as the *Georgia Railroad Tax Case*, although the Central of Georgia Railway was also a plaintiff. The facts were briefly these:

The Georgia Railroad and Banking Company and the Central of Georgia Railway each owned fifteen thousand shares in the Western Railway of Alabama, a "foreign corporation." For twenty-two years the railroads had paid no taxes on these shares because the Supreme Court of Georgia had held, and it had been generally understood, that foreign stock was not taxable in Georgia.

But, in 1901, the Comptroller General of Georgia requested the Attorney General to give

an opinion as to whether foreign stock was taxable in the State. The Attorney General thought that it was. The Comptroller General then proposed to tax the Georgia Railroad on its shares of Western Railway of Alabama stock for the year 1901. Whereupon the Louisville and Nashville Railroad and the Atlantic Coast Line Railway Company—which roads leased the Georgia Railroad—filed a bill in the United States District Court, for the purpose of testing the correctness of this opinion. The Court held that foreign stock was not subject to taxation in Georgia. This decision was affirmed by the United States Circuit Court of Appeals for the fifth Circuit. The case was then carried to the Supreme Court of the United States, which reversed the decision of the lower courts and ruled that under the Constitution of 1877, foreign stock was taxable in Georgia. The decision was made effective on January tenth, 1905; and on January twenty-seventh, the Comptroller General of Georgia wrote to the President of the Georgia Railroad Company, that, the Supreme Court of the United States having held that the stock of the Western Railway of Alabama was taxable in Georgia, it became his duty to assess it for taxation for each of the twenty-two years in which the road was in default for its taxes, and that the assessment would be made from "the best information obtainable." He asked the President of the Georgia Railroad Company to sub-

mit any facts or suggestions that he had to offer, or to give him any data with reference to the value of this stock and closed his letter with the words: "I expect to proceed in this matter sometime next week, if possible."

Both the President of the road and the attorneys who represented it replied to this letter, protesting against these assessments. But on February seventh the Comptroller made twenty-two separate assessments against the Georgia Railroad Company, for back taxes—one for each year that the Company had owned the stock. On February ninth, he again wrote to the President of the road asking him for a check for \$125,974.00 for State taxes due by the railroad on its fifteen thousand shares of stock in the Western Railway of Alabama. The railroad refused to pay the assessment, on the ground that it did not owe the debt, and on February seventeenth the Comptroller issued twenty-two *fi. fas.* for State taxes alone; to which he added interest at seven per cent for each year that the road had owned the stock and had failed to pay taxes thereon. These twenty-two *fi. fas.* were not levied on the stock described in the assessments and executions, but were levied on the warehouses and freight yards belonging to the Georgia Railroad in Atlanta. On the twenty-third of February, 1905, the Sheriff of Fulton County notified the Georgia Railroad that he would proceed "to advertise and sell" the property described "before the Court House door

in the city of Atlanta on the first Tuesday in April, 1905." This valuable property consisted of some three acres of land in the city of Atlanta, with the warehouses, tracks and other properties thereon.

The Central of Georgia Railway had been similarly dealt with by the Comptroller General; and the attorneys who represented that road estimated, in their briefs, that if to this assessment, which was for State taxes only, were added the municipal and county taxes as well, the computation for the two roads, with interest, would aggregate a total of one million dollars. The two railroads therefore, joined in their defense, and the *Georgia Railroad Tax Case* became a test case which would decide the fate of both roads.

The Georgia Railroad Company filed a petition in the Superior Court of Fulton County against William A. Wright, Comptroller General of Georgia, and J. W. Nelms, Sheriff, seeking to enjoin the twenty-two *fi. fas.* issued on these back tax assessments. A Temporary Restraining Order was granted and the case proceeded, by various petitions and answers, through the Superior Court of Fulton County, where the injunction was refused, until it reached the Supreme Court of Georgia.

Judge Lamar was retained in the case in April, 1905. He devoted the greater part of that summer to writing his brief for the Georgia Supreme Court where the case was heard during

the October Term of the year 1905. It is doubtful whether he ever put so much time and labor, so much grey matter and nervous energy, into any other work as went into the preparation of his brief in this case. Whether it were won or lost before the State Supreme Court, the case would inevitably reach the United States Supreme Court, and his brief seemed to appeal beyond the Supreme Court of Georgia to the Supreme Court of the United States. He based his argument on constitutional grounds and put them so strongly that if the Georgia Supreme Court denied the appeal, he was in a position to plead that the Court had denied the railroad the privileges guaranteed it by the Constitution of Georgia and the Fourteenth Amendment to the Constitution of the United States.

In commenting on the facts in the case Lamar's language was emphatic. He said:

"For one hundred and twenty-nine years Georgia has been a State, and during all of that long period not one of her citizens has ever paid taxes on foreign stock. Once, in 1876, an effort was made to collect such a tax. But it failed . . . because of the positive and authoritative ruling by this Court that such stock was a mere symbol and not taxable.

"For a quarter of a century citizens and Comptroller alike continued the ancient practice and acquiesced in this ruling, when, in December,

1904, the Supreme Court of the United States decided that foreign stock was taxable in Georgia.

“Armed with this decision the Comptroller reached back through all the years during which this Company had rested on the security of the universal practice and the opinion of the Supreme Court of Georgia, and assessed the Georgia Railroad on stock which, up to that time had been universally treated as non-taxable. He did more. He not only assessed it for one hundred and twenty-five thousand dollars for principal tax, but added interest to such an extent that it nearly equalled the crushing tax itself. But this was not the worst. These extraordinary assessments were made *ex parte*, without a hearing, without evidence, without trial.

“From the ordinary and untrained mind these facts could evoke but one judgment and it shall be the object of this brief to show that the voice of Equity and the voice of the Law unite in pronouncing such assessments void.”

He based his argument upon the Fourteenth Amendment to the Constitution of the United States which provides that: “No state shall . . . deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.” He maintained that in what the Comptroller General of Georgia had done there was no “due process of law;” that to tax any cor-

poration was to deprive it of property, and that in a case like the one at bar, where it was a question of the value of property, its ownership and its taxability, the decision was a judicial one and the Company had a right to have notice given it and to be heard in its own defense; that to take its warehouses and freight yards without such a hearing, was to deprive it of property without that due process of law which the Constitution guaranteed.

The Comptroller General had stated that notice had been given the railroad each year for twenty-two years, and that the Railroad Company could have been heard at any of those times; and also that, just before making the assessments, he had written a letter to the President of the Georgia Railroad Company notifying him of his intention to make the assessments.

Lamar replied to this by saying that, in reference to the notice given during each one of the twenty-two years, the Railroad had made its returns, in each instance, according to the law as then understood in Georgia; that the return for each year had been accepted and the account closed, and that for the taxing officer, twenty-two years later, to re-open the books and to assess new taxes required a new notice and a new opportunity for the Railroad to be heard in its own behalf. The brief further asserted that the letter which the Comptroller General of Georgia had sent to the President of the Georgia Railroad

Company, on January twenty-seventh, 1905, was "not notice amounting to process which would sustain the assessments issued on February seventh, eleven days thereafter." That to fulfill the intention of the Constitution all of its provisions must be complied with. He said:

"Each term in the phrase, Due Process of Law, is important. The notice must be *Due*—that is, reasonable, fair and just. It must be *Process*—not a letter nor an invitation to be present or an information as to the pendency of a suit, but process. It must be a *Process of Law*—not of grace or a favor arising out of the inherent instinct of fairness on the part of the officer seeking to give the notice which the State ought to have required; but opportunity to be heard must be demandable as a right."

The letter to the President of the Georgia Railroad Company was *not Process*. It was not even an invitation to attend at a time and place to be heard. There was nothing to indicate that there was to be any hearing with the right to cross-examine the witnesses for the State, or to offer evidence in its own behalf; and there was no such hearing. This point was re-iterated and driven home with blow upon blow, and clinched with citations from case after case.

Even a criminal, he argued, has a right to a trial, to his day in court. But the Georgia Rail-

road Company was not a criminal. Each year in the twenty-two years it had made its return, not concealing the fact that it owned this stock. It had not returned it for taxation because foreign stock was not held to be taxable in Georgia. The return for each year was accepted. No fault was found with it. Each year, after making the return, the Georgia Railroad Company was "authorized to go thence without a day." It was not expected that it "should hover in perpetual attendance upon the tax court, to see that no change was made in this return, or that a new judgment should not be made on the old return. . . . Laws are not intended as traps, or as means by which the Sovereign, especially, can catch up a confiding and law abiding citizen."

At the time when this case was tried, the provisions of the Fourteenth Amendment had not been so often or so successfully invoked for the protection of corporate property as they are to-day, and the other attorneys in the case did not rely upon them to the same extent that Judge Lamar did. They were even inclined to be sceptical as to the relevancy of the provisions of the Fourteenth Amendment in this instance. But Lamar emphasized them so persistently, that he almost came to be known as "Due-Process-of-Law-Lamar."

The Supreme Court of Georgia disposed of the argument summarily by repeating that if, during the twenty-two years when the railroad had

owned this foreign stock, it had returned it for taxation, the road could have been heard; but that not having done so, even though it had acted in good faith in not making this return, it was a defaulter and had no right to have notice or to be heard, and the arbitrary assessment was a penalty for this failure to return the stock. The sole exception to this rule was where there was a charge of fraud or corruption on the part of the taxing officer, and no such charge had been made in this case.

After the final decision by the Supreme Court of Georgia, the case was appealed to the Supreme Court of the United States. A motion was entered to advance the trial, and it was heard on Monday, Tuesday and Wednesday, October twenty-first, twenty-second and twenty-third, 1907.

Lamar argued the constitutional questions involved; the right to a hearing and to the equal protection of the laws. One of the illustrations that he used in his oral argument was very characteristic. He was emphasizing his main point—the fact that these assessments were made without allowing the Georgia Railroad Company an opportunity to be heard in its own defense. The Company had not been permitted to summon witnesses to show the actual value of the property which was levied upon; to prove its taxability or ownership. It had not been permitted to show cause, if any, why this tax should not have been levied.

Even God, he reminded the Court, the Judge of all the earth, had granted a hearing to Adam before he was evicted from the garden of Eden.

*“Hast thou eaten of the tree whereof I commanded thee that thou shouldest not eat?”* the Creator demanded. And Adam was allowed to answer and to show, if he were able, why sentence should not be pronounced against him.

The attorneys who represented the railroads before the Supreme Court in Washington, returned to Augusta greatly depressed. The Court had given no intimation from which they could derive the slightest encouragement. The suit had been tried again and again in the State Courts and *had been lost as often as tried*. The pending decision of the United States Supreme Court would be final, and the importance of the case, the years of labor which had been spent upon it and the immense sum involved, made the issue a very serious matter to all the lawyers concerned.

But serious as it was for the others, it would be impossible to overestimate the importance that Judge Lamar attached to it. He had resigned his seat upon the Georgia Bench a little more than two years before, and, filled to the brim with the gloomiest apprehensions, had returned to the practice of his profession. His family were familiar with his skill in underestimating his own ability, and in detracting from his own performances; and they had learned to discount his statements with regard to them. But even they had never

before seen him so full of dark forebodings. He was sure, he said, that he would never regain the practice that he had resigned when he had left Augusta, in 1903. His health was impaired, and he doubted whether his experience as a judge had not permanently unfitted him for success as a practitioner. This was the most important case he had ever tried, the interests involved were tremendous, he had staked his professional reputation on the relevancy and force of the constitutional points he had made; it was his great opportunity to show that he could still practice law, and if he lost the case—words could not express the abyss of failure that would then yawn before him.

Fortunately his suspense was brief. A little less than a month after his return from Washington, a telegram from the Clerk of the Supreme Court of the United States gave the headlines of a decision in favor of the Georgia Railroad Company. This was joy enough for one day. But when the full text of the opinion was published his cup ran over, for the decision was based on the railroad's right to a hearing and it followed, step by step, the line of argument in his brief. The closing paragraph of the opinion reads:

“Reluctant as we are to interfere with the enforcement of the tax laws of a State, we are constrained to the conclusion that this system does not afford that due process of law which adjudges

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upon notice and opportunity to be heard which it was the intention of the Fourteenth Amendment to protect against impairment by State action. . . .”

Judge Andrew J. Cobb, formerly of the Georgia Bench, in writing of this decision said:<sup>1</sup>

“In this case Mr. Lamar had to combat the well known conservatism of that Court where an attack is made upon the system of taxation of a State, as well as the unanimous decision of the Supreme Court of the State. While there were other counsel of distinguished ability in the case, they all concur in crediting to him the preparation of the written argument on the point upon which the decision is based.”

In writing to Judge Lamar soon after the decision was rendered, Judge Cobb said:

“I congratulate you on your victory in the Tax Case. I say *your victory* advisedly, for in letters recently received from Major Cumming and Mr. Cunningham, they each give you the whole credit for the argument on that branch of the case on which the Supreme Court based its decision.”

The Georgia Railroad Tax Case attracted a great deal of attention at the time, and has since

<sup>1</sup> *Men of Mark in Georgia*, Volume iv.

been frequently cited. Judge Lamar was congratulated warmly upon his success, even by officers of the State who were deeply disappointed over the outcome of the case. It has been said that this was the first time that the Supreme Court of the United States ever declared a State tax law unconstitutional and the tax void because contrary to the provisions of the Fourteenth Amendment.

## CHAPTER IX

### THE HOUSE ON THE SAND HILLS

WHEN the Lamars returned to Augusta in 1905, the house on Greene Street had been leased for a term of years, and they made their home temporarily with their friend Miss Anna Montgomery on the Sand Hills. The Hill—as it is commonly called—is about three miles west of the city of Augusta. It was long ago a popular summer resort for Augusta's citizens. They built comfortable, roomy houses on shady, spacious lots and moved out to them during the summer months. The Hill is only three hundred feet higher than the city, but its soil is pure sand and the air is dry, with a freshness and life in it that is more stimulating than the humid air of the river bottom where Augusta is seated.

The Hill abounded in quaint houses, many of them hidden away among a mass of trees and shrubbery which bloomed in a symphony of color from the gold of the yellow jessamine in February until the last pink, crimson, and white petals fell from the crêpe myrtles, before the coming of the frost. In 1880, when the Lamars moved to Augusta, some of the citizens had begun to live

on the Hill the year round, but it had not then become the popular winter resort that it is now. Mrs. Lamar remembers meeting Dr. Williams on Broad Street many years ago, and asking him the meaning of an imposing array of carriages drawn up in front of the Planter's Hotel. "They are for some gentlemen who have come to look at the river," he replied. "We are being discovered."

And discovered the Sand Hills were, if not upon that occasion, soon after; for presently tourists began to come to the hotels and boarding houses which sprang up on every hand; and sometimes to rent private houses; and many of them stayed to buy or to build houses of their own.

Shortly before his retirement from the Supreme Court of Georgia, Judge Lamar had, in a curious way, become the owner of a place on the Sand Hills. It was at one time a popular boarding house kept by a Mrs. Smyser, and was therefore known as the Smyser house. It had belonged, originally, to Charles J. Jenkins, who was a judge of the Supreme Court of Georgia in 1860; Governor of the State in 1865, and president of the Constitutional Convention of 1877. There is probably no better illustration of Judge Lamar's attitude towards his clients and towards those to whom he was opposed, than the story of the litigation that had occurred over the Smyser house. The case was a miniature *Jarndyce v. Jarndyce*; but, in this instance, it was the attorney and not

the client who had borne the anxiety and had paid the expenses during the thirteen or more years the estate was "in chancery." The place consisted of the old house and about six acres of land on the outskirts of the Hill. It had belonged to Mrs. Smyser who had left it, by will, to her husband, for his life, and after his death to her son by a former marriage. Lamar represented the son. But the stepfather had a claim against the estate, which, together with the value of his life interest, threatened to consume all of the property if the place were sold at public outcry to satisfy the debt due Mr. Smyser.

At the time of his wife's death, Mr. Smyser was over ninety years of age, and it was assumed that he had not many years left in which to enjoy his life interest in the property. An arrangement was therefore made to borrow the money to pay the debt which the estate owed him, and, the son being without funds, Mr. Lamar himself agreed to pay the interest on the loan for the space of three years, a period which was supposed to be more than equal to the remaining years of Mr. Smyser's life estate. The loan and Mr. Lamar's fees and advancements were secured by a mortgage on the property.

But the aged widower lived until the end of the three years, and then lived through another three years; lived, in fact, until he was over a hundred years old, and enjoyed his life interest in his wife's home for eleven years after her death.

At the end of the stipulated three years, Mr. Lamar could have refused to pay any more interest. The mortgage would then have been foreclosed and if the property sold for a sufficient sum, he could have collected his claim for fees and expenses, and his share of the business would have been closed. But this he could not bring himself to do, for it would have meant that a very old man would have been turned out of his home with no adequate means of support, and that the son would have received nothing for his reversionary interest in his mother's estate. For the house was old and ramshackle and the land exceedingly poor; and if the place had been sold under the hammer, it would hardly have satisfied the claims which it secured. Mr. Lamar, therefore, yielded to his client's wish that the foreclosure should be postponed until the termination of the life estate, when the property might be disposed of more advantageously at a private sale. Year after year, therefore, Lamar, contrary to the advice of his friends, continued to pay the interest on the loan, the taxes, the insurance, and what not, in order to protect his client's interest in the estate, and that the old man might be left with a roof over his head.

Finally, the old gentleman died, and every effort was made to sell the place. Lamar advanced the money for painting and repairs, besides beginning a law suit to clear a cloud on the title which developed after the old man's death. But

all to no avail. No purchaser appeared and presently the son, who was in need of money, began to urge Lamar to buy his interest in the property at a price which he named. Judge Lamar was reluctant to do this; he did not want the place; but his own claim against the estate had by that time become quite large, and in the end he consented to buy it.

And at last, after so long a time, the mortgage that secured the loan was foreclosed. Judge Lamar paid his former client the price he asked for his interest in the estate and bought it in at the sheriff's sale. The highest bid that was offered was less than the total amount of indebtedness for which the property stood as security. Nevertheless, a few days later, Judge Lamar wrote to his former client, stating the price he had paid at the sheriff's sale and the various sums he had expended, in cash, on account of the property during the long period since he had first taken charge of the case, not including interest or any fees for legal services. He said that if his client could sell the property, within a year, for a sum that would cover this amount, together with any subsequent expenses that might arise for taxes and insurance, he would gladly allow him to keep any profit that he might make over this figure. But no such sale could be effected and the property which had so strangely come into Judge Lamar's possession, remained his for many years thereafter.

In the course of its history, the Smyser house had passed through many hands. It must once have been an attractive, colonial cottage. But one builder had added an incongruous front porch, and another had put on a Mansard roof, and the house had become a distressing piece of architecture. After it became a boarding house an annex of four rooms had been added, for the convenience of its guests and the service they required, and kitchens, stables, servants' rooms, wood houses, and other buildings, were scattered liberally about the premises. By 1905, when the Lamars returned to Augusta, this legal souvenir had fallen into sad decay. It ate up money for taxes, and for repairs, without bringing in any revenue, and had become a veritable white elephant to Judge Lamar. Mrs. Lamar, however, had looked at it with a discerning eye, seeing in it wonderful possibilities. She urged her husband to try the experiment of rebuilding it, and living in it. But Judge Lamar would have none of it. The place was too big, he objected; it was too far from the street cars, *et cetera, et cetera*, and besides, he preferred to live in town. But, during the pleasant days of spring and early summer, while the Lamars lived with "Miss Anna," the charm of the Hill began to have its effect on him and gradually overcame his opposition to leaving the city. Meanwhile, events occurred which decided the question for them.

Late in the summer of 1905, Mr. Lamar's

father came to live with them, after the sudden death of his wife. It was necessary to have a home in which to make him comfortable. The house on Greene Street was still under lease, and the Smyser house was vacant, and partly furnished. The Lamars therefore went to it from the train on which they brought their father home and never left it until their removal to Washington in 1910. Before they moved into the house Mrs. Lamar had formulated plans for rebuilding it, and they were no sooner installed in the place than she began to put her plans into execution. After the house was finished, her husband said that he had fought these changes, inch by inch. But Mrs. Lamar was inexorable. First the annex was moved to a far corner of the large lot and fitted for their occupancy while the house was being built. The old house had to be torn down to the main floor; but they salvaged some treasures from the wreck, among them a delightful front door, its pilasters hand carved with delicate reedings. As the plans began to take shape, Lamar's interest was aroused and, as often happened when he began by opposing his wife's projects, he ended by becoming their most enthusiastic supporter. The house was a success, but the grounds seemed to be hopeless. The soil was pure sand. There was a tradition that a former owner, not satisfied with the supply on hand, had hauled a carload of fine white sand from the sea-shore and spread it over the front yard. It glit-

tered in the moonlight like hoar frost and a visitor from the North regarding it from her window, one shiny autumn night, wrote to a friend at home that though the air was mild the ground was covered with a light fall of snow. But the climate was the most flower-provoking that could be imagined. The Lamars improved the soil. They passed their time in a quest for fertilizers. Not a leaf escaped them. They supplied rich soil and abundant water, and nature supplied the flowers. There were a number of flowering trees and shrubs which had managed to survive in that unfriendly soil, and they thrived amazingly under the care they received. The old crêpe myrtles took on new life and filled the place with clouds of rosy bloom from June to October.

The change in their surroundings marked a new development in Judge Lamar's character. Most of his life had heretofore been spent in cities, and the love of country life and country scenes which was, in later years, so marked an element in his nature, was dormant. He did not know that it existed. To have a few acres of his own in which to watch things grow that he had planted; to study, at close range and on his own domain, the intimate habits of plants and birds; these pleasures were a revelation to him, and his interest deepened with the years.

It was characteristic of him that he went deeply into these new fields. He ordered books, of course, by the best authorities on the cultivation

of plants and trees and on the habits of birds. He gave Mrs. Lamar the best pair of field glasses that he could find and insisted that she keep a record of every bird that they identified. Her note book shows that during the five years when they lived on the Hill they counted, from their own portico, more than sixty different varieties. For the Hill was a favorite winter resort for birds, as well as for other tourists. Some kinds, like the robins, only stopped between trains, as it were. But they always stopped; and they might have remained longer, but for the inhospitable reception given them by the mocking birds. These "trim Shakespeares" had had possession of the place for so long that they considered their title indefeasible. They made no claims beyond the limits of the lot, but they would dart suddenly, with shrill cries, at a trespassing dog or even a cow, until the animal would realize that it was not wanted and would take itself off. But the pursuit always ended when the road was reached. Then the warrior would return to his castle. Sparrows, cardinals, blue-jays, catbirds and wood-peckers were tolerated; they had been there, probably, as long as the mocking birds. But such transients as cedar birds, and—worst of all—robins, were anathema. In the early spring, they would come in such numbers that the ground was literally covered with them. At such times, the mocking birds were hopelessly outnumbered. All that they could do was to isolate the stragglers

from the main company of robins, attack them, and drive them away, one by one.

And they had cause. The place was planted with a species of *Ilex*; a little, evergreen tree called the Cassena Berry, whose small, translucent berries, like ripe, red currants, glistened among the green leaves from January to January. For the new berries formed before the old ones dropped off. The thrifty mocking birds would thread these berries between their long beaks, and feed them, one by one, to their hungry, crying babies; the supply proving fully equal to the demand. But when the robins came in force they would, in one day, strip the little *Ilex* trees of every single berry, while the miserable mocking birds looked on, helpless, as their year's support was being snatched from before their eyes.

No one can live in a yard full of mocking birds, and escape being fascinated by them. For they are not only the most gifted singers, but the most intelligent of all the birds. Brave to a fault; the most entrancing suitors; singing all day and every moonlight night; bowing before their lady-loves and dancing dainty minuets with them up and down the sandy walks; very inquisitive, always waiting nearby to see what you were doing in the garden. Vain, too, standing on one perch and singing to you as long as you would stop to listen, and finishing each recital with an outstretching of the wings and a sudden rise and fall to the same stand that suggested the manner

of a diva acknowledging an encore. Mr. Lamar learned their habits and catered to their tastes. His especial care was the little wooden basin, sunk in the grass under a perpetually dripping faucet, where numbers of birds daily drank and bathed. For there were no streams within a mile of the house. He saw to it that the tree which bore hard boiled eggs in the nesting season was never found empty. The birds knew which tree it was, and remembered it from season to season.

The dining room windows of the house opened on a portico. One spring, a family of five mocking birds came, each morning, for breakfast. They were regularly served with hard boiled eggs outside, while the Lamar family breakfasted on soft boiled eggs, inside. At first, before the birds had learned to confide in their landlords, one parent would watch in a nearby tree, while the other snatched pieces of the yellow of the egg from the piazza floor to carry to the nest; the sentinel giving a quick alarm if any one even glanced out of the door. But later on, when the young birds were older, the whole family of mockers would appear on the portico, and the Lamars were even allowed to sit nearby while the young birds were being fed. For the mocking bird trusts you utterly, once you have gained his confidence.

There is a story to tell about those field glasses. During the World War, when the men of the

American Expeditionary Force began going overseas, the Assistant Secretary of the Navy, Franklin D. Roosevelt, sent out an appeal for the loan of field glasses, for the use of the lookouts on the United States Ships. With a sinking heart, Mrs. Lamar sent him her glasses, hardly daring to hope that she would ever see them again. But in the spring of 1919, they came back to her, with the following memorandum:

“This glass has been used by the lookouts and watch-officers of the *U. S. S. Olympia* which has, since February 1st, 1918, covered approximately 16,900 miles in the Atlantic and Arctic Oceans.

“During March and April, 1918, the ship was engaged in convoy duty, safely escorting about 50,000 tons of merchant shipping from American ports, to within a few hundred miles of the British Isles. Late in April, the ship left Charleston, S. C., arriving some weeks later at Murmansk, Russia, one of the few ports North of the Arctic Circle. At one time in the passage, the ship was within a thousand miles of the Pole, an unusual experience for an American Man-of-War.

“At Murmansk and Archangel, the *U. S. S. Olympia* landed the first armed American Forces in Russia. Operating with British and French troops, these forces penetrated over a hundred miles inland from Archangel.

“The ship left Russia two days after the Armistice was signed, and just as the long Arctic night

was coming on, arriving at a British port five days later.

“The large number of watch-officers and look-outs required by war conditions necessitated a supply of binoculars far in excess of the ability of the Navy Department to provide at once, and the gratitude of the Navy Department, and of the individual officers and lookouts, to whom they have been of such valuable service, is due to the persons who so generously loaned these instruments.”

In the late autumn of 1908, there was a flutter of excitement on the Hill. The newly elected President of the United States, Judge William H. Taft was coming, with his family, to spend a part of the winter in Augusta, that he might recuperate from the fatigue of his campaign, and make his plans for the coming administration. He had taken a furnished house on the Hill, and while it was being made ready, the President elect, and his family, were guests of Mr. and Mrs. Landon Thomas. Mrs. Thomas had met them, the previous summer, at Hot Springs, Virginia, and had promised to assist them in finding a suitable house. Another link in the chain which was to bind them to Augusta, was “Archie Butt,” whom Mr. Taft had chosen to be his Aide in the White House. Captain Butt was a native of Augusta and much beloved by its citizens; and by the time the distinguished visitors had made themselves

at home in the Terrett cottage, very pleasant relations had been established with the Lamars and other Augustans.

There was a little court of Mr. Taft's relatives and friends stopping at the Bon Air Hotel. Among them were Mr. and Mrs. Charles Taft, Mr. and Mrs. Boardman, Mr. and Mrs. John Hays Hammond, and other interesting people. They made a delightful social circle and added to the brilliancy of the many entertainments that were given. Ancient wines were uncorked, beautiful old silver and heavy cut glass were given an extra polish and no pains were spared to make the honored guests feel at home and welcome. Augusta had nothing to ask, no political favors to seek, her only wish was to do everything in her power to make Mr. Taft's stay agreeable.

The Hill had never known a gayer season. The Bon Air Hotel, which was only a stone's throw from the Terrett cottage, hadn't a room to spare, and all the boarding houses were filled to overflowing. It was rumored that the newly elected President was choosing the members of his Cabinet, and the eyes of the nation were focussed on Augusta, in an anxious endeavor to learn the tenor of the coming administration.

But Mr. Taft kept his own counsel. He lent himself graciously to the hospitality that was shown him. He played golf on the Bon Air links with Major Cumming; talked law and politics with Major Black, who had represented the

Augusta district in Congress in the nineties; motored over the hills; enjoyed a barbecue at "Carmichael's," and dined at various houses, making friends wherever he went. It was a case of love at first sight on both sides. Augusta became a second home to the President and his family, and he became as one of her own sons. They appreciated his genuineness and his simplicity, and he valued their cordial friendship.

In February, the Tafts and their friends went on a voyage to Panama, leaving Augusta and its people with plenty of leisure on their hands to talk things over. And they had something to talk about.

It was a matter of common knowledge that Judge Lamar's friends in Augusta, and elsewhere, had long looked upon him as worthy of an appointment to the Supreme Court of the United States. And the President-elect had no sooner announced his intention of spending a few months in Augusta than a subdued buzzing began—now here, now there—as to the probability of such an appointment, whenever a vacancy should occur. It came from the most unexpected sources. Some one in Ohio wrote Mrs. Lamar that, as soon as he heard of Mr. Taft's intended visit to Augusta, he had "mentally put Mr. Lamar's name in nomination for the Supreme Court," and friends on all sides began to prophesy.

Nothing was more characteristic of the Judge than his attitude towards these rumors. He would

not listen to them. He said that there was not the faintest possibility that Mr. Taft would offer him any position which he could accept—certainly not a seat on the Supreme Bench. He would not allow the subject to be mentioned in his hearing, and he strictly charged his family that it must not be thought of, much less discussed, by any of them. They obeyed him implicitly, and gradually the talk died out. But in the following November, 1909, President Taft returned to Augusta as the guest of Major Cumming, and the rumors received an unexpected impetus. During his stay the President paid a morning call on Judge Lamar. Captain Butt was with him and the moments passed unheeded, for the President was in excellent spirits. After a time, Captain Butt, who had gradually been growing uneasy, looked at the clock in the hall, and asked Mrs. Lamar if it kept good time. She said that it did. The hands of the clock pointed to fifteen minutes after eleven, and the visit continued; though with increasing nervousness on the part of the Aide who was responsible for the President's appearance at a function in his honor on another part of the Hill. After the visitors left, the Lamars happened to look at the clock. It was still a quarter after eleven! With consternation Mrs. Lamar remembered that, finding it had been set an hour fast, she had stopped it that morning to allow the time to catch up with it, and had forgotten to start it again. Of course,

the family cast aspersions on her explanation. They insisted that it was only another instance of her well known foresight! Her husband said that she had vrilled the clock.

President Taft's second visit to Augusta, and the long morning he spent with Mr. Lamar, revived all the rumors that had been current during the previous autumn; and when, a year later, in the winter of 1910, two vacancies occurred on the Bench, the newspapers and the neighbors united in predicting Mr. Lamar's appointment. His own attitude was unchanged. If anything it was exaggerated. But on Monday morning, December the twelfth, 1910, things began to happen. Suddenly, out of a clear sky a telegram arrived from Captain Butt, sending his love and congratulations. Other messages came. The Associated Press admitted that they had the news marked "release after twelve o'clock," when the President's nomination of Judge Lamar would be sent to the Senate. Gradually, it dawned upon him that the rumors had been true. He had been nominated to the Supreme Court of the United States!

The fact seemed to leave him dazed. He had been absolutely sincere in discrediting all the reports that had been in circulation, and when his wife came hurrying to his office, and went to him and kissed him, he looked at her inquiringly and said, "Good-bye."

Meanwhile a flood of telegrams and congrat-

ulations came pouring in, and what followed was, if possible, even more in keeping with Judge Lamar's character than his previous attitude had been. They little knew the modesty of the newly appointed Judge, who assumed that his doubts and misgivings were at an end. Driven from the pillar of incredulity, he retreated to the post of uncertainty and apprehension. He could not deny that he had received the nomination; but, he insisted, the Senate would never confirm the appointment. He was a Southern man, a Democrat, and practically unknown outside his own State. And if these were not sufficient handicaps, there was the added disability that he represented railroads and other corporations, which were then under Congressional ban. Why should the Senate confirm him? But he keenly appreciated the honor, and welcomed the congratulations of his friends. Therefore all these kind and gratifying messages must be answered before the Senate had time to act. For it would be mortifying to thank the writers after his confirmation had been refused. His family submitted to his decision, and the succeeding days were very trying. Early and late he dictated replies, each one carefully worded—though the recipient would never have suspected it—to refer only to the fact of the appointment.

Fortunately for himself and his family, this state of uncertainty did not last long. Three days later, on December fifteenth, a telegram from

Senator Bacon, the senior Senator from Georgia, announced that the Senate had confirmed Justice Lamar's appointment by a unanimous vote.

The next few days were filled with unusual duties, events and emotions. There were dinners, receptions and parties. Friends came bringing little gifts for the Lamars "to remember them by." As if they could ever be forgotten! The Augusta Bar gave the new Justice a notable banquet. President Taft, who was invited, sent a kind note of regret. Senator Bacon, who had taken a deep interest in the appointment, came from Washington for the occasion, and was Judge Lamar's guest. The warmth of affectionate friendship that glowed around the table, almost made the new Justice regret the appointment that was to remove him from his associates and friends of so many years. The day of the banquet a number of out-of-town lawyers lunched with Mr. and Mrs. Lamar; a merry gathering of old friends who seemed to take as much pleasure and pride in the honor that had come to Joe Lamar as though it had been bestowed upon themselves. One of them admitted, confidentially to Mrs. Lamar, that while the matter was under consideration, their main fear had been that Joe would write to President Taft to advise him to appoint some one else!

From day to day, the house on the Sand Hills was haunted by enterprising reporters who were trying to extract something striking or interest-

ing from Mr. Lamar concerning his past career. But with the best will in the world to oblige them, he could not recall that he had ever said or done anything that would interest the public. His own attitude, through it all, may be suggested by a remark that he made to a friend:

"I had a singular dream the other night," he said. "*I dreamed that the President had appointed me to the Supreme Court of the United States.*"

## CHAPTER X

### THE SUPREME COURT OF THE UNITED STATES

THE Lamars reached Washington on December twenty-ninth, 1910, and went to the Shoreham Hotel. The following evening they attended a reception given by Mr. Justice and Mrs. Lurton. They told themselves that, being strangers, they need only speak to their hosts, and then slip away to the rest they so much needed. But little they knew their Washington and its proverbial hospitality to new officials. They had not been ten minutes in the rooms before they had met nearly every one in them. People came up and introduced themselves in the most charmingly cordial way, and the newcomers soon forgot how tired they were, and were among the last to leave the house.

The first day of January, 1911, fell on Sunday, and New Year's Day was to be officially observed on Monday, the second. The last day of the year brought many pleasant visitors and elaborate, printed instructions, from the Supreme Court office, as to the conduct of the Court on New Year's Day. The Lamars dutifully memorized these directions and carried them out to the letter; only to find that they had been issued,

on each New Year's Eve, in the same form, apparently, since a time whereof the memory of man runneth not to the contrary, and that no one but themselves paid the slightest attention to them.

The President's reception on New Year's Day is one of the most interesting of all the White House entertainments. It is less formal than the State receptions which are given to the Diplomatic Corps, to the Supreme Court, to Congress and to the Army and Navy. There are no invitations, save the announcement in the papers; but the whole city, practically, takes part in it for it is the one occasion in the year when the White House doors are thrown open to the public.

The White House is a delightful place. Justice Lamar and his wife had never known it under any other régime, but Mrs. Taft had the reputation of conducting it remarkably well. The rooms were always lovely with flowers and cheerful and homelike with open wood fires, and New Year's Day has a charm of its own. No matter how disillusioned and jaded Washington might be at the end of the season, every one was fresh, eager and hopeful on New Year's Day; glad to be back again and to be meeting friends, often for the first time in the season. The year was beginning—anything might happen, any wish might come true, before it ended. And if the day was clear, and the air crisp, and the sun shone in the

southern windows, it would be hard to imagine an atmosphere more full of charm.

On this occasion, as upon other New Year's Days, the Justices went to the White House together, in carriages, at a stated hour; each with his colored messenger very much in evidence on the box. The families of the Justices followed, and joined the members of the Court, and other privileged characters, in the Red Room. Here they waited, meeting their friends and talking together, until their time came to be received by the President. President Taft met his official family upstairs, and at eleven o'clock the Marine Band sounded the first notes of the National Anthem. Conversation ceased, and every one faced the grand stairway, down which came the military and naval aides—eight of them, in couples; their uniforms gay with gold cord and bullion fringe. Next came the President and Mrs. Taft, followed by the Vice-President and Mrs. Sherman. The members of the Cabinet followed in the order in which their Portfolios were created. They filed into the Blue Room; the President and Mrs. Taft, Mrs. Sherman, and the wives of the members of the Cabinet formed in line; and the reception began.

The first to "go down the line," were the members of the Diplomatic Corps—the Nation's guests—in resplendent uniforms, glittering with gold lace and decorations. Then came the members of the Supreme Court in the order of their

appointment, each accompanied by his family, Justice and Mrs. Lamar, and their two sons, bringing up the rear.

Captain Butt stood at the President's side, and presented each guest. He knew every one in Washington, and had never been known to forget a title or to get one wrong. He was letter perfect as an aide, and he made the first and only error of his official career upon this occasion. When Mr. Justice Hughes was presented, he announced: "Mr. Justice White." The President laughed: "Archie has got his colors a little mixed," he said. "You mean his hues," retorted the Justice.

After being formally received, the favored officials were allowed to linger "behind the line," where they watched the endless procession; Senators, Congressmen, officials of all the Departments of the Government; the Army, the Navy, and last of all the unofficial citizens of Washington. The Lamars were told that the line had formed down Pennsylvania Avenue to the front door of the White House at an early hour that morning. It was still passing when they came away, about one o'clock.

The day had begun with rain but it cleared off towards noon, and as Justice and Mrs. Lamar were leaving, the Chief Justice proposed that they walk home together. It was only a short time since his appointment and it seemed to the Lamars, as they crossed Lafayette Square and

turned out H Street, that every man, woman and child whom they met stopped to offer the Chief Justice a word of congratulation; for he was an old resident of the city, and greatly beloved. He was very modest in his acknowledgment of the compliments showered upon him. He told Justice Lamar there was a saying in Washington that, when the public threw a bouquet, one sometimes found that it concealed a brickbat! But to the end of his life his popularity did not wane. There were no brickbats in his bouquets, and there were plenty of bouquets.

After luncheon, the members of the Court went to the home of the Chief Justice, where he, Mrs. White, and the wives of the Associate Justices formed another line and received, apparently, every one in the city: chiefly men, of course, for women, as a rule, did not call on New Year's Day, though a few dropped in, on that day, to congratulate the Chief Justice.

Later in the afternoon, there followed an entertainment quite as characteristic of the Washington of those days, as the reception at the White House. On every New Year's Day, at five o'clock, Captain Butt would throw open his little house on the corner of Nineteenth and I Streets, and it would be thronged with his friends, both men and women. Captain Butt had written and telegraphed, asking Mrs. Lamar to receive for him on this occasion, and the Lamars went to his house at five o'clock. The Captain made the

presentations, and as he rolled off the list:—"The Postmaster General; the Ambassador of France; the Secretary of the Smithsonian; the Netherlands Minister";—Mrs. Lamar, being new to the ways of Washington, found herself thinking: "This sounds very imposing, but how is one to know the names of these gentlemen?" She was soon to learn that names were unnecessary. One said, "Mr. Ambassador," "Mr. Minister," "Mr. Senator," "Mr. Attorney General." It was simple enough, once you knew how.

Later in the afternoon, there was a stir in the crowded rooms. The visitors opened a way, and the President came in. He was accompanied by two aides in uniform, and the inevitable secret service men, and he greeted his host and the guests who stood near, as cordially and heartily as though he had not been standing for hours at the White House, shaking hands with an endless line of visitors. The President of the United States is not expected to pay visits or to attend private entertainments, and President Taft's appearance at this reception was a distinguished compliment to Captain Butt. It added éclat to the occasion. It was one of those kind and thoughtful things which President Taft delighted in doing, and did so easily and graciously.

Between seven and eight o'clock that evening, the Lamars tottered home to their beds; their arms laden with flowers and the echo of pleasant greetings in their ears. They had been upon

their feet—and trying to put the best one foremost—from ten o'clock in the morning until seven in the afternoon, with only a short interval for luncheon. It was in this manner that they were broken into harness; the harness of official life in Washington.

The next day, January third, 1911, they were all in the seats assigned to the families of the members of the Court, to see the two new Justices take the oath of office.

The Court room of the Supreme Court is one of the most interesting rooms in Washington, and redolent with memories of the famous men whose voices were heard there when it was the Senate Chamber of the nation—the days of Webster, Clay and Calhoun. It has grown rather small for the Court, and occasionally some one proposes erecting a Judicial Building which would afford more space for the Bench and the Bar. But the Justices are apt to listen indifferently to these suggestions. They would be loath to give up their historic setting. They are not interested in a room that would accommodate a great many people.

The Court is opened each day with a brief and dignified ceremony. It is probably the only survival, in this Republic, of the pomp and circumstance of medievalism; such things have their place and their use even in a Democracy.

A sudden hush comes over a room that is always quiet, as the gavel falls at noon, the audience rises and the Court Crier announces:

"The Chief Justice and the Associate Justices of the Supreme Court of the United States."<sup>1</sup>

The nine Justices, gowned in their black robes and preceded by the Marshal, enter from the right of the dais where their seats are placed. Three pause at the right; three go to the left, and three to the center. When all are in their places, they bow to the bar and take their seats as the Crier calls:

*"Oyez! Oyez! Oyez! All persons having business before the Honorable, the Supreme Court of the United States are admonished to draw near and give their attention, for the Court is now sitting. God save the United States and this Honorable Court!"*

It is a ceremony that makes one realize the dignity and authority of the exponents of law and order in a self governing republic, and Justice Lamar's family heard it, on that January morning, for the first time, with deep emotion.

The members of the Court entered in the order of their appointment, and the two new Justices—Justice Van Devanter and Justice Lamar—followed. They paused, each in his turn, near the entrance, while the Clerk administered the oath. Justice Lamar's voice sounded clear and resonant as he repeated the solemn words, promising to "administer justice without respect to persons

<sup>1</sup> In 1911, and for some years thereafter, at the instance of Mr. Justice Harlan, the Crier announced: "The Honorable, the Supreme Court of the United States."

and to do equal right to the poor and to the rich, . . . to support and defend the Constitution of the United States against all enemies . . . to bear true faith and allegiance to the same," . . . to "well and faithfully discharge the duties of the office upon which I am about to enter. So help me, God." Very simple words, but words which are never, for one moment, forgotten by the "nine quiet men who spend their lives away from the political field, free from the necessity of demagoguery," and who, "in times of political upheaval, of sectional animosity, of communistic uprising . . . constitute the very sheet anchor of the institutions of our land."<sup>1</sup>

And then they took their places, Justice Van Devanter at the extreme right of the Chief Justice, and Justice Lamar at the extreme left, and the business of the day began.

A number of opinions were read by the Court. One of them reversed a decision rendered by Justice Van Devanter in the United States Circuit Court. Another decided, adversely, a case which Justice Lamar had argued before the Supreme Court, at the preceding term. It may have been an accident, but it was said, of course, that the Bench was administering a little wholesome discipline to the newly appointed brethren.

The men who composed that august body, when Mr. Lamar sat on the Bench, were as agreeable

<sup>1</sup> Junius Parker, *American Law Review*.

socially as they were distinguished in their profession. While the members of the Court did not live in the same house, as they did in the beginning, when John Jay was Chief Justice, they saw a great deal of each other. There was a weekly Conference while the Court was in session, and almost daily ones—of two or more members—during the recesses, when the opinions were written. They lunched together at the Capitol, and some of them walked together, to and from the Court; besides meeting socially, as a rule, once or twice in the week. They went together to call upon the President at the beginning of each term, and two of the eight formal State functions which were given annually at the White House, were given to the Court. They were the Judicial Reception which followed the Diplomatic Dinner, and the State Dinner to the Chief Justice and the Associate Justices which came next on the calendar. A formal dinner was given to the Bench, each year, by the Chief Justice and one by the Attorney General, and there was a more or less judicial flavor about all the dinners given by members of the Court. Apart from these more formal occasions there were pleasant, informal meetings, and that sort of official intimacy that springs up, inevitably, from a community of interest.

Justice Hughes, Justice Van Devanter and Justice Pitney were comparatively near neighbors of Justice Lamar, and they were often together.



STANDING: JUSTICE VAN DEVANTER, JUSTICE LURTON, JUSTICE HUGHES, JUSTICE LAMAR  
SEATED: JUSTICE HOLMES, JUSTICE HARLAN, CHIEF JUSTICE WHITE, JUSTICE MCKENNA, JUSTICE DAY

THE SUPREME COURT IN 1911



And a few years later, Justice McReynolds came and went to the Lamar house on New Hampshire Avenue, like a younger brother. Justice McKenna and Justice Lamar were golf companions and the Chief Justice was constantly dropping in to talk over some questions connected with the Court. These discussions usually ended in personal conversations, in which the Chief Justice would recall the many interesting scenes in which he had taken part during his long, public career. It is a pity that no record was kept of his reminiscences; they would have shed an interesting light on many pages of American history.

Nothing could have been kinder than the elder-brotherly attitude of the Chief Justice. He was interested in every detail that concerned the welfare or the happiness of each member of the Court. Was it the renting of a house, the engaging of a servant, or one of the more puzzling questions concerning the ethics of the position, he was both competent and willing to advise.

Edward Douglas White, Chief Justice of the United States, had the reputation of being one of the ablest men who ever sat on the Bench. He had been in public life since 1874; in the Senate from 1891 until 1894; and on the Bench—first as an Associate Justice and afterwards as Chief Justice—from 1894 until his death in 1921. He knew the inside story of practically every important event in American history, during the

previous fifty years; knew well every man in public life. Presidents, senators and congressmen had a way of consulting him on public questions, and his memory had the ineradicable character of India ink, as distinct as it was durable.

And with all this, he was delightfully human and quite early Victorian in his courtesies. He was always showering little attentions on the members of his official family, stopping at the door to leave a fine cigar "for the Justice," or a rose for the Justice's wife.

If ever a man had a hobby, his was the Court. He looked at every event from that angle; and his customary exclamation, when anything untoward threatened: "It will ruin the Court!" came to be a part of the Lamar family vocabulary to express the extreme limit of disaster. When all other words failed them, they would throw up their hands and cry, "It will ruin the Court!"

He usually walked to the Capitol from his house on Rhode Island Avenue, and always stopped, on the way, to feed the squirrels who came from their little green boxes on the Mall, marked officially: "Commissioner of Parks and Grounds." The squirrels knew him and ate from his hand, and one suspected that they timed their appearance by the hours set for the opening and adjournment of the Court.

Justice White had the utmost reverence for the office he held; he recognized what it meant to be

Chief Justice, not of the Supreme Court, as the position is often misnamed, but "Chief Justice of the United States." But with it all, he was the most democratic of men; he never asserted himself, or obtruded his rank.

Justice Harlan, of Kentucky, at that time in his seventies, was one of the most sociable of the group. He entertained a great deal, in a quiet way, in his pleasant, rambling old house on Fourteenth Street Hill. He found time for informal visits, when he would recount his own experiences in public life with a fine sense of perspective. His wife was a handsome, stately gentlewoman, with a delicious sense of humor and a special talent as a raconteuse. Her stories, good and original in themselves, were rendered even more irresistible by the contrast between their ludicrous details and her own dignified and distinguished bearing. When the Harlans appeared together in public—the tall, white-haired old gentleman, with his strong, clear-cut features, and the distinguished looking matron, leaning on his arm—the other members of the Court always felt well represented.

One Sunday evening in October, 1911, at the beginning of Justice Lamar's second season in Washington, several members of the Court had dropped in at the Lamar house on New Hampshire Avenue for a half hour's chat, in the friendly way they had. Among them was Justice Harlan, who lingered after the others had gone, talking about the Civil War and how Kentucky was kept in

the Union. He was suffering from a cold, and as the evening closed in, the Lamars began to be uneasy about him. When he rose to go, it appeared that he was walking, and Mrs. Lamar insisted on taking him home in the electric car she was learning to drive. He was greatly interested in the little car and asked innumerable questions about its cost and the expense of its upkeep and before they knew it, they had reached his door and their pleasant ride was at an end. That was the last time the Lamars ever saw him. A few days later they called at his home to inquire about him and were told that he was seriously ill. He passed peacefully away on the fourteenth of October, at the age of seventy-eight. It was said that he had an ambition to serve as long as John Marshall, the illustrious Chief Justice whose name he bore; and he came quite near to having his wish.

One of the most interesting figures in the Court was Justice Holmes. After Justice Harlan, he was the oldest, but at the same time one of the most active men of the group. He disdained the use of a typewriter or the assistance of a stenographer, and wrote his opinions in his own clear, characteristic hand—wrote more of them, as a rule, than any other member of the Court, and, so far as one could learn, he never recast a sentence, once he had put it on paper. The post of secretary to Justice Holmes is a kind of order of merit, and is bestowed upon graduates of the Harvard

Law School who have attained special distinction. Justice Holmes was a delightful dinner companion, and Mrs. Lamar considered herself fortunate when she was seated by him at the table. He gave her a recipe for salad dressing, at one dinner, which began like this, "You take a hat full of oil . . ." But the contemplation of so much oil seemed to wash out the recollection of the rest of the recipe.

It was his habit to use very direct and forcible English. Among Justice Lamar's papers are some notes in Justice Holmes's clear and vigorous hand. One of them reads: "That was a rattling good statement," and in another he says of a decision which Justice Lamar had, according to custom, submitted to the Court for criticism, "I should think, from a single reading, that you had done the job to the Queen's taste."

Mr. Justice Lurton was excellent company, and told a story with a slow, deliberate elaboration of its humorous qualities; not as though he suspected that it was excruciatingly funny, but as though he were trying, at all costs, to put the facts before you, exactly as they had occurred.

The Lamars and the Lurtions dined together, one evening, at the White House, during Justice Lamar's first season in Washington; a dinner to which they were bidden by telephone, when Mr. Justice and Mrs. Lurton, Mr. Horace Taft, and themselves were the only guests. When they had finished their coffee, they continued to sit

around the table—too much entertained to risk going into another room—and talked and listened to Justice Lurton's stories until nearly midnight.

Mr. Justice Day was fond of saying that the Supreme Court was one of the pleasantest clubs in Washington. His own personality added no little to its attractions. His humor was somewhat dryer than Justice Lurton's, and had a tang to it like very hard cider. Everyone who knew the Washington of those days remembers the leisurely old white horse which was always "waiting patiently about" for Justice Day, at the hour of adjournment. Mrs. Day called him "Apres-vous," for obvious reasons.

Justice Day and Justice Van Devanter were both born on the seventeenth of April. They gave each other annual birthday dinners on alternate years, which were among the most delightful parties that Justice and Mrs. Lamar attended.

The Lamars were the "Babies of the Court," according to immemorial usage; but as Justice Van Devanter and Justice Lamar were sworn in on the same day, Mrs. Lamar and Mrs. Van Devanter regarded themselves as twins, and rendered each other aid and comfort upon many occasions. Mrs. Lamar had no quarrel with the position assigned to her, but felt that, being an official infant, she was entitled to a certain amount of oversight and watchful attention, and that excuses should be made for her on account of her judicial youth and inexperience. Washington

is full of pitfalls for the ignorant and the unwary. The first thing that a newcomer encounters is the vexed and puzzling question of official precedence. Who shall sit at the right of the hostess at a dinner? Who shall be the first to leave the room after an entertainment is over? These are questions of tremendous importance. One may not leave until after the highest official—or his wife, if it be a party for women—has departed. But sometimes it is a question who is the highest official. There is a story current in Washington of a hostess whose social ambition outran her discretion. She called up the State Department and informed Mr. Adeé that she intended giving a dinner and proposed to invite the Dean of the Diplomatic Corps, the Chief Justice of the United States, the Secretary of State, the Speaker of the House and the ranking member of the Senate. Would Mr. Adeé kindly tell her how to seat her guests? The Department advised her to take the next convenient train out of Washington and to remain away until after the party was over.

Mr. Root was in the Senate that winter and he told Mrs. Lamar that when it came time to go home, after a dinner, and the wife of the ranking official rose and gave the signal to her husband, he felt like saying, "*Now lettest thou thy servant depart in peace.*"

Mrs. Lamar sat next the Senator at a dinner soon after she came to Washington, and he very kindly pointed out to her the important guests.

She asked the name of a handsome woman who sat opposite them, who had a mass of beautiful, white hair piled high on her head. After giving her name, the Senator said: "But I don't see how a lady from Georgia can help going round behind her and picking cotton off her head."

Mrs. Lamar answered, "I might have done that a few years ago when cotton was seventeen cents a pound, but now that it is down to eight cents . . ."

"Oh, well," he interrupted. "In that case you may as well go on and finish your dinner."

This dinner was given at one of the handsomest houses in Washington and the host was an official of high rank. But when his guests were leaving he gave Mrs. Lamar a rosy cheeked apple to take home with her, telling her that it had been grown on his own farm. Such simple, informal attentions are characteristic of Washington. They are in refreshing contrast to the formality of the rigid rules and conventions which obtain there, and they make the city a very delightful place. Naturally the newcomers were charmed with it; they enjoyed it all, not excepting the numerous visits that were required of people in official life.

The custom of receiving and returning official calls was a feature of life in Washington that was interrupted by America's entry into the World War, and in all probability it will never be resumed in all of its old time rigor. But when the

Lamars lived in Washington, the streets were filled with carriages and automobiles every afternoon. Everyone went about leaving cards, stopping where official "Days" were being kept or lingering at the charming "At Homes" of unofficial Washington, which were in many ways the pleasantest of all.

## CHAPTER XI

### JUSTICE LAMAR'S OPINIONS

IN describing a town on the Pennsylvania Railroad, some one said, not long ago, that it was the station where cattle trains regularly stopped while the stock was taken from the cars for rest, water and feeding; and the author was instantly carried back to Judge Lamar's first year in Washington. For the first opinion that he delivered turned upon the interpretation given to an act of Congress which was intended to protect cattle from the cruelties incident to their transportation, by slow freight trains, over long distances, during which time they were often confined for days in crowded box cars. The statute provided that once in every twenty-eight hours the cattle should be unloaded into properly equipped pens where they were to be fed, watered and allowed to rest.

In the case of the *Baltimore and Ohio Southwestern Railroad Company v. United States*, 220 U. S. 94, eleven suits were consolidated. It appeared from the record that several hundred head of cattle, belonging to eleven different owners, had been shipped, at different hours, from different points. They were all assembled in one cattle train, consisting of twenty-one cars, and had all

been confined for more than the twenty-eight hours allowed by law. The Act imposed a penalty for every violation of its order, and the question to be decided was the number of penalties for which the railroad was liable.

Four different theories had been advanced. First, that the railroad owed a penalty for each animal so maltreated; second, that it owed one for each carload; third, one for each trainload and fourth, one for each shipment. The animals had been confined for different periods, varying from thirty-seven to forty-five hours; but as they were all assembled in one train, the attorneys who represented the railroad argued that it all constituted one offense for which only one penalty was due. They illustrated their point by saying that if goods stolen from a house belonged to several different persons, the theft would be a single offense; and that a man convicted of working on Sunday is not liable to punishment for each item of work done. Judge Lamar said:

“But this does not mean that if the thief should, at a different time, steal property from the same place he could not be punished for the new transaction. . . . For every penal statute must have relation to time and place, and corporations whose operations are conducted over large territory, by many agents may commit offenses, at the same time, in different places, or at the same place, at different times. Here the twenty-one cars, loaded

at different periods, had been gathered into one train. As the period of lawful confinement of the cattle first loaded expired, there was a failure to unload. For that failure the statute imposed a penalty. But there was then no offense whatever as to the animals in the other twenty cars of the same train, which, up to that time, had not been confined for twenty-eight hours. When, however, later in the day, at the same or at a different place, the time for the lawful confinement of the animals in the other twenty cars successively expired, there were similar, but distinct failures, then and there to unload. . . .

"The Company is liable for nine penalties, because nine times it failed to unload as required by the statute."

The case had been argued the year before, in March, 1910, when the Court, consisting of only eight members, had divided, four to four, as to which theory should prevail. The case was therefore returned to the docket and soon after Judge Lamar took his seat, it was re-argued before a full Bench. In rendering the decision of the Court he wrote an opinion in which the entire Court joined.

Justice Lamar's opinions are characterized by their clearness, by the simplicity of their language, and by the absence of technical words and phrases. There is never any doubt as to what he means to say and in many cases an intelligent child could

follow his reasoning as readily as a member of the profession. This was partly due to the fact that the practicing attorney was always at his elbow. He could not help trying to be understood and to convince his readers of the justness of his position. But it was not all due to force of habit. Years before he ever dreamed that he would one day render the opinions of the Court, he wrote these words:

“For above all else it is the public announcement of the reason and principle on which every judgment is rendered that has supplied the strength of our judiciary.”<sup>1</sup>

And he always had in mind “that final appeal to the forum of reason to which, at last, every reported decision of our judiciary must be carried.”<sup>1</sup>

The most important function of the Supreme Court is its right and duty to declare void those statutes which are at variance with the Constitution—the miscalled “veto power” of the Court—a phrase that is perhaps responsible for much of the wrong thinking that prevails on this subject; since the term suggests that the Court may declare an act void, as a President may veto it—because he thinks it unwise, or because it is contrary to his political convictions. The President

<sup>1</sup> *The Work and Position of American Courts*, Lamar, Joseph R., 1902.

may veto a bill which otherwise would have become law, and which may still become law if two-thirds of the Congress vote to overrule the presidential veto. But decisions of the Supreme Court are not questions of political policy. A statute which is actually at variance with the Constitution is already void. The Court merely announces the fact. It was never law and it could not be, even if the Court did not declare it void. It may be made law by amending the Constitution, but not otherwise; neither by the vote of Congress nor the Court's failure to render a correct judgment.

But a statute may be in conformity with the Constitution and yet may require defining and interpreting, and here the Court renders an invaluable service. For some of the most important enactments of Congress are more or less unworkable until the Court has decided what are their limitations and restrictions. And where an opinion attempts to distinguish between conflicting theories of the law, it is essential that the legal knife be sharp and the separation clear cut and final.

During Judge Lamar's service on the Supreme Bench, a number of cases were assigned to him which involved the scope and jurisdiction of the Interstate Commerce Commission as contrasted with the jurisdiction of the courts; and the interpretation of the Hepburn Act and the Carmack Amendment—Acts which were, at one time, al-

most as familiar to the public as the eighteenth amendment is today, and which furnished the occasion for numerous law suits until their limitations were so clearly defined by the courts that few can now recall the issues they raised. In rendering these decisions the simplicity and clarity of Judge Lamar's style stood him in good stead. The distinctions that he drew are both clear and convincing, and have since been followed by the courts.

In the same way, he distinguished between the legislative power of Congress to make laws concerning Forest Reserves, Government Irrigation Plants and the management and control of public lands, on the one hand; and on the other, the administrative power of the Executive Departments of the Government to make and enforce the rules and regulations which are necessary to put these laws into effect.

The most interesting as well as the most important opinion which he delivered in connection with public lands, was in the case of the *United States v. Midwest Oil Company*, 236 U. S. 459; which involved nothing less than the power of the President of the United States to withdraw, in the interest of the Government, certain public lands from private entry. The facts in the case may be briefly stated:

Congress has declared that all public lands containing petroleum or other mineral oils and chiefly valuable therefore, are "free and open to occupa-

tion, exploration and purchase by citizens of the United States, . . . under regulations prescribed by law."<sup>1</sup>

In 1909 the Director of the Geological Survey made a report which showed that the Government's oil lands in California were being so extensively explored and patented by private citizens, and the oil in them so rapidly extracted, that in a few months the Government's supply of oil from these sources would be exhausted. In view of the fact that oil was used as a fuel by the Navy, he recommended that the filing of claims to oil lands in the State of California should be suspended. The Secretary of the Interior brought this recommendation to the attention of President Taft who thereupon issued a Proclamation, temporarily withdrawing some three million acres of land in California and Wyoming from public entry until Congress should pass the necessary legislation to conserve this valuable property.

Six months after the publication of the Proclamation, William T. Henshaw and others, entered upon a quarter section of this public land in Wyoming, so withdrawn. They bored a well, discovered oil and thereafter assigned their interest to the Midwest Oil Company.<sup>2</sup> The United States' Government sued the Company for the recovery of the land and for an accounting for

<sup>1</sup> Act of February 11, 1897.

<sup>2</sup> A part of this land was included in the Teapot Dome Investigation in 1924-5.

the oil consumed. The Midwest Oil Company replied that the President had no authority to issue the withdrawal order, because there was no law granting such powers to the Executive. The case was argued before the Supreme Court on January ninth and twelfth, 1914, but no decision was reached. It was restored to the docket and re-argued on May seventh, 1914; and on February twenty-third, 1915, Justice Lamar delivered the opinion of the Court, in the course of which he said:

“We need not consider whether, as an original question, the President could have withdrawn from private acquisition what Congress had made free and open to occupation and purchase. The case can be determined on other grounds and in the light of the legal consequences flowing from a long continued practice to make orders like the one here involved. For the President’s proclamation of September twenty-seventh, 1909, is by no means the first instance in which the Executive, by a special order, had withdrawn land which Congress, by general statute, had thrown open to acquisition by citizens. And while it is not known when the first of these orders was made, it is certain that ‘the practice dates from an early period in the history of the government.’ . . . The number of such instances cannot, of course, be accurately given, but the extent of the practice can best be appreciated by a consideration

of what is believed to be a correct enumeration of such Executive orders mentioned in public documents. They show that prior to the year 1910 there had been issued:

“Ninety-nine Executive Orders establishing or enlarging Indian Reservations;

“One hundred and nine Executive Orders establishing or enlarging Military Reservations and setting apart land for water, timber, fuel, hay, signal stations, target ranges and rights of way for use in connection with Military Roads;

“Forty-four Executive Orders establishing Bird Reserves.

“In the sense that these lands may have been intended for public use, they were reserved for a public purpose. But they were not reserved in pursuance of law or by virtue of any general or special statutory authority. For it is to be specially noted that there was no act of Congress providing for Bird Reserves or for these Indian Reservations. There was no law for the establishment of these Military Reservations or defining their size or location. There was no statute empowering the President to withdraw any of these lands from settlement or to reserve them for any of the purposes indicated.

“But when it appeared that the public interest would be served by withdrawing or reserving parts of the public domain, nothing was more natural than to retain what the Government already owned. . . . Congress did not repudiate the

power claimed or the withdrawal orders made. On the contrary it uniformly and repeatedly acquiesced in the practice and, as shown by these records, there had been, prior to 1910, at least two hundred and fifty-two Executive Orders making reservations for useful though non-statutory purposes. . . .

"Government is a practical affair intended for practical men. Both officers, law-makers and citizens naturally adjust themselves to any long-continued action of the Executive Department—on the presumption that unauthorized acts would not have been allowed to be so often repeated as to crystallize into a regular practice. That presumption is not reasoning in a circle, but the basis of a wise and quieting rule that in determining the meaning of a statute, or the existence of a power, weight shall be given to the usage itself—even when the validity of the practice is the subject of investigation."

It may have been partly due to his habitual use of very direct and simple language and his scant reliance upon technical terms, that Lamar seemed able to see in every legal question, no matter how technical the issue, the principle of justice upon which it rested. The mason who is building a Cathedral may have no knowledge of the plan of the completed edifice; the mathematician who works out a problem usually does not think of the great, underlying axioms which

govern the science; but Lamar always seemed to be aware of the fundamental principles upon which all laws are founded. In one of his opinions <sup>1</sup> he used a phrase which furnishes a key to most of his decisions. It was a question of the right of a State court to impose a fine in certain proceedings, and the point was made that because it was not subject to appeal, the power of the State court was unlimited.

"But it is limited," he wrote. "It is limited by the obligation to administer justice, and to no more assess excessive damages than to impose excessive fines. The power to render a final judgment must be lodged somewhere, and . . . right of appeal is not essential to due process of law."

The obligation to administer justice! When all is said this sentence discloses the Court of Highest Appeal, the appeal to the sense of justice, to the universal conscience of enlightened humanity which sits in continuous session to execute judgment. And in his practice at the Bar, as in his opinions from the Bench, Lamar was able to brush aside the purely technical arguments in which a case was entangled and to decide the question on the fundamental principles of right and wrong.

An illustration of this method of administering justice appears in the opinion he wrote in the case of the *Westinghouse Company v. The Wagner*

<sup>1</sup> *Standard Oil Company v. Missouri*, 224 U. S. 270.

*Manufacturing Company*, 225 U. S. 604. The Wagner Manufacturing Company had used a patent belonging to the Westinghouse Company in connection with one that it owned, and had so mixed and confused its accounts that there was no way of telling how much of the enormous profit that it had made was due to the Westinghouse patent and how much to its own. The lower court had decided that the Westinghouse Company could only recover one dollar as damages, because it could not prove what part of the profit was earned by the illegal use of its patent. Not so Justice Lamar. He ruled that when the Wagner Company, in addition to its original offense, had so confused its accounts that an equitable division was impossible, it followed that one party or the other must bear the entire loss, and that the penalty must fall on the wrong doer. "On the plainest principles of justice," he wrote, "the guilty trustee cannot take advantage of his own wrong doing."

The decision, in its essential features, might have been rendered by a wise parent adjudicating the claims of the innocent and the guilty in a case of juvenile pilfering.

Another illustration of this almost summary method of "administering justice," was in the case of the *Wadley Southern Railway Company v. Georgia*, 235 U. S. 651. The situation was a curious one. The Georgia Railroad Commission, like other State railroad commissions, had the

right to impose fines and penalties to enforce its orders—very heavy fines and very serious penalties. But their most serious feature was the fact that they were cumulative in their effect—so much for every violation of the same order. And as the Commission's orders often referred to daily, sometimes hourly, occurrences, the penalty for even a week's disobedience might be appalling. It is true that a railroad had the right to appeal to a court to decide whether the order of the Commission was valid, and if the court found it invalid, the road would escape the penalty. But if the court found the order valid, the railroad must not only lose its suit and pay the costs involved, but must also pay the fines that had accumulated during every day of every week of every month while the case was being tried. So that, in losing its suit, it might also, and by the same process, lose its entire property. This unhappy situation recalls the case (although not cited by counsel), in *Alice Through the Looking Glass*, in which the sentence came first and the trial followed after. The result of this ruling was that, although a road had the right to appeal from the Commission's orders, it did so at such tremendous risks that it was safer to submit to a possibly unjust order than to appeal to a court for relief.

The case relied on by the Wadley Southern Railway Company was *Ex Parte Young*, 209 U. S. 123, which arose out of a similar act creating a

railroad commission in Minnesota. In that case the Supreme Court had pronounced the Minnesota Act unconstitutional because it denied the right to a hearing in practice while allowing it in theory. The Wadley Southern Railway Company claimed the benefit of this decision and argued that the Georgia Act was also unconstitutional.

Justice Lamar, however, interpreted the Georgia Statute as allowing the railroad immunity from punishment while its case was being heard in court. He said that the part of the Act which imposed these cumulative penalties "must be construed in connection with other parts of the same law which did contain such a provision," and that *until the State Court should give the statute a contrary construction*, it must be interpreted in such a way as to leave it valid and as conferring the full constitutional right to a hearing in court. If the court found the order invalid, no penalties would be exacted. But if it found the order valid, the penalties would not begin to accrue until after such a decision was rendered. He held that: "to construe the statute in any other way would not only impute to the legislature an intent to deny the equal protection of the law, and to permit the carrier to be deprived of property without due process of law, but would operate to nullify the penalty section as a whole."

This simple and practical solution of a difficult situation seems so reasonable that it appeals to every one's sense of fair play.

In reading Justice Lamar's opinions—and still more in his dissents—one can hardly fail to be impressed by his attitude toward what he called "the Court's protective and restraining powers." He looked upon the law as a city of refuge for the friendless and the oppressed, and was always ready to invoke its aid for the weak and the defenseless against the powerful and the strong. We have seen his interest in protecting dumb animals from needless suffering, and he held the ægis of the law over the immigrant, the Indian, the alien, the Filipino and the woman of the underworld.

In rendering the opinion of the Court in *United States v. Nord Deutscher Lloyd*, 223 U. S. 512, in which an alien was unlawfully brought to this country by a steamship company, he points out that it is care for the interest of the alien, as well as protection to the United States, which is behind the act prohibiting owners of vessels from making any charge, or receiving any security, for the return passage of such aliens.

"The Government might, in large measure," he said, "protect itself by inspection, rejection and order of deportation; but it proposed also, as far as possible, to protect the alien. He might be ignorant of our laws, and ought to be deterred from incurring the expense of making a passage which could only end in his being returned to the country from whence he came. This policy

could best be subserved by securing the co-operation of the transportation companies, and to this end the statute required that they should not only maintain the aliens unlawfully brought by them into this country, but should take them back free of charge. In the absence of this last provision the company might well afford to accept, as passengers, those known, or suspected, to belong to the excluded class. It would receive from them their passage money from Europe to America. If they passed the inspection, the transaction was ended. If they were deported, the company would be at the trifling expense of maintaining them while here. But if it could charge, and secure, payment for the return passage, it would collect two fares instead of one. This would have made the transportation of an excluded alien more profitable than the carrying of one who could lawfully enter. This was so obvious that the statute not only required the cost of their passage to be borne by the transportation company, but prohibited the making of a charge, or the taking of security, for the return passage, which might be collected or enforced at the end of the journey."

The opinion in the case of *Choate v. Trapp*, 224 U. S. 665, upheld certain rights of the Choctaw and Chickasaw Indians. Its opening sentence is arresting; it begins: "The eight thousand plaintiffs in this case," and shows that:

"In the Government's dealings with the Indians, . . . the construction [of the law] instead of being strict, is liberal; doubtful expressions, instead of being resolved in favor of the United States, are to be resolved in favor of a weak and defenseless people, who are the wards of the Nation and wholly dependent upon its protection and good faith. This rule of construction has been recognized, without exception, for more than one hundred years."

But it is in the wording of his dissents that Justice Lamar's characteristic point of view appears most clearly. He was not a dissenting judge. He delivered only eight written dissents during his five years on the Bench, and four of them were in protest against what he regarded as an act of oppression of the weak by the powerful and the strong. He protested against what he considered a discriminating tax against a Chinaman <sup>1</sup> who kept a laundry. He displayed an almost unjudicial heat in protesting against a judgment by which a Filipino <sup>2</sup> was twice tried for the same crime and convicted in his absence—he having waived the right to be present. He held that the Filipino's waiver of his right to be present at his own trial did not justify the court, which had accepted his "waiver as though he alone had an interest in the method of his trial . . . The

<sup>1</sup> *Quong Wing v. Kirkendall*, 223 U. S. 59.

<sup>2</sup> *Diaz v. United States*, 223 U. S. 442.

public also has an interest in his life and liberty and neither can be lawfully taken except in the manner prescribed by law."

In the case of *United States v. Holte*, 236 U. S. 140, the opinion of the majority of the court held that:

"A woman who is transported in violation of the White Slave Act of 1910, may be guilty of conspiracy with the person transporting her, to commit a crime against the United States under section thirty-seven of the Penal Code of March fourth, 1899."

The dissenting opinion which Justice Lamar delivered is, in part, as follows:

"I dissent from the conclusion that a woman can be guilty of conspiracy to have herself unlawfully transported in interstate commerce. . . . For if she is within the circle of the statute's protection she cannot be taken out of the circle by the law of conspiracy and thus be subjected to punishment because she agreed to go. . . .

"The statute treats the woman who is transported, . . . as a victim—often a willing victim, but nevertheless a victim. It treats her as enslaved and seeks to guard her against herself as well as against her enslaver; against the wiles and the threats, the compulsion and inducement of those who treat her as though she were merchan-

dise and a subject of interstate commerce. . . . To hold otherwise would make the law of conspiracy a sword with which to punish those whom the Traffic Act was intended to protect."

While he was quick to invoke the law's protection for these defenseless ones, Justice Lamar did not allow his sympathies to interfere with the strict application of the law. Not long ago, an eastern lawyer <sup>1</sup> wrote Mrs. Lamar that, in the course of a trial which he attended, "one of our wisest lawyers, a referee and also a District Court Judge," had said:

"The best law student's opinions ever written from the Supreme Bench of the United States were those by Lamar. I mean that each of these opinions teaches conclusively the law at the time he wrote it."

The Supreme Court of the United States is not a place in which to look for sensations. No one knows, in advance, when important decisions will be rendered. All day long, when the Court is sitting, the public drifts in and out from behind the large screen which conceals the main entrance to the room. People stand quietly, for a moment, to gaze upon the Court and then slip away to the more exciting Chambers of the Senate and

<sup>1</sup> Richard W. Hale, Esq., of Boston, quoting Judge Henry T. Lummus.

the House of Representatives. But the fifteenth of May, 1911, was an exceptional one in the historic room in which the Court sits. For on that day the Chief Justice delivered the memorable opinion in the Standard Oil case, and Mr. Justice Harlan read his famous dissent. It was nearing the end of the term; the decisions in this and in other important cases were being anxiously expected, and the Court room was crowded, on that May morning, when the gavel fell and the Crier summoned the audience to its feet.

As soon as the Court was opened, Justice Lamar began to read an opinion. When the first sentence was spoken: "This is a proceeding to reverse a judgment finding that Samuel Gompers, . . ." there was a perceptible stir in the Court room. Lawyers pricked up their ears to listen, the casual spectator became suddenly attentive, and reporters stole softly from the room to go to the nearest telephone and warn their respective newspapers that "the Gompers decision was coming down."

The case of *Gompers v. Bucks Stove and Range Company*, 221 U. S. 418, attracted a great deal of attention on account of the prominence of the parties concerned, who had been convicted and sentenced to prison by a lower court on the ground that they had illegally continued a boycott which the Court had ordered them to discontinue. The decision which Justice Lamar delivered, released Mr. Gompers and other mem-

bers of the American Federation of Labor from the sentence imposed upon them; but in delivering the opinion, Justice Lamar said:

“The Court’s protective and restraining powers extend to every device whereby property is irreparably damaged or commerce illegally restrained. To hold that the restraint of trade under the Sherman anti-trust Act, or on general principles of law, could be enjoined, but that the means through which the restraint was accomplished, could not be enjoined, would be to render the law impotent.

“Society itself is an organization and does not object to organizations for social, religious, business and all legal purposes. The law, therefore, recognizes the right of working men to unite and to invite others to join their ranks, thereby making available the strength, influence and power that come from such association. By virtue of this right, powerful labor unions have been organized.

“But the very fact that it is lawful to form these bodies, with multitudes of members, means that they have, thereby, acquired a vast power, in the presence of which the individual may be helpless. This power, when unlawfully used against one, cannot be met, except by his purchasing peace at the cost of submitting to terms which involve the sacrifice of rights protected by the Constitution; or by standing on such rights and appeal-

ing to the preventive powers of a court of equity. When such an appeal is made, it is the duty of government to protect the one against the many, as well as the many against the one."

As Mrs. Lamar drove home from the Capitol, late in the afternoon, the news boys were crying extras. They contained Justice Lamar's opinion which filled the head lines of the early editions of the afternoon papers. But the surpassing public interest in the Standard Oil decision which was rendered later in the day, crowded the case into less conspicuous columns in the final editions of the papers.

Soon after he took his seat on the Bench, Justice Lamar began to deliver his opinions orally, which added to their effectiveness. He had a good speaking voice, and his quiet manner of stating the decision of the Court and the reasons therefor, was convincing.

Justice Hughes once said to Mrs. Lamar that when it came to delivering opinions from the Bench, Justice Lamar was their "star performer."

## CHAPTER XII

### WASHINGTON IN PRESIDENT TAFT'S TIME

THE Washington of those days was a delightful place in which to live. There were pleasant, informal gatherings; brilliant entertainments given in honor of distinguished men and women; gossipy afternoons, over a wood fire, at the end of an official "At Home;" wonderful music, both at the old "New National," where the symphony concerts were given on Tuesday afternoons, and at private houses, where one sometimes heard artists who could fill any theatre on either side of the Atlantic. There was a coterie of friends within the larger, official circle who met each other frequently. Many of them were possessed of unusual charm, and they opened their doors to Justice Lamar; for his social gifts made him a welcome addition to any group. "We all loved him," said Justice Holmes. He was speaking of the members of the Court, but it was true of a much larger circle.

The Lamars did not stop long at the Hotel. Through the kind offices of Captain Butt, they were able to secure, for the remainder of the season, a pleasant, furnished house on Massachusetts Avenue; Number 2419, at that time the last house on the Avenue. "The farthest North,"

Justice Hughes called it. And here Mrs. Lamar kept her first official "Monday at Home," in a blinding snow storm with one hundred and twenty-five visitors. Justice and Mrs. Hughes were their nearest neighbors, and had rented Number 2401; a house occupied, later, by Mr. Speaker Clark.

The social side of Mr. Lamar's life was largely in his wife's keeping. Not being accustomed to dining out nearly every evening of the week, nor to making dinner engagements four weeks in advance of the day, he began by assuming an attitude of profound scepticism as to her entire social program. When she informed him, in the evening, that they were dining at any house but their own, he would instantly be full of misgivings. He was sure that some mistake had been made. They were going to the wrong house, or going on the wrong day, or at the wrong hour. But when, night after night, they arrived, in due season, at a dinner where they were evidently expected, his doubts began to subside and he placed himself in her hands with almost comic resignation. His mind at rest on this score, the Justice was at his best. He enjoyed meeting people and they enjoyed meeting him. It was always easy for him to find some interest which they shared in common. If he did not "often know their mothers," like Mrs. Burnett's obliging hero, he would know some friend, or a great deal about the public men from their States; or he would discover some hobby in which they were mutually interested.

On one occasion, at a dinner party, he sat beside a distinguished looking woman who told him she remembered meeting a Mr. Lamar, many years before, at the old St. Nicholas Hotel, in New York. He had his daughter with him, a delightful little girl. She wondered if they were relatives of Justice Lamar's.

"If you will make that little girl a little boy," he answered, "I was that little boy." And they kept up the fiction of having known each other in the remote past when that little girl was a little boy.

The life was all new and interesting to the Justice and his wife; even diverting at times, because their inexperience frequently led them into making amusing blunders. They were not fully settled in the house on Massachusetts Avenue, when Captain Butt called, one afternoon to bring a note from Mrs. Taft, asking them to go with the President and herself to hear *The Chocolate Soldier*, the following evening. Captain Butt impressed upon them the supreme importance of being in time, explaining that the opera would not begin until the President was in his box. The invitation, which was for seven o'clock, only mentioned the opera, but the hour should have told them that they were expected to dine at the White House. This did not occur to them, however. They were so much afraid of keeping a theatre full of people waiting that they were ready, the next evening, at six o'clock. They snatched

a hasty dinner and appeared at the White House on the stroke of seven. Here they found their hosts, with a few other guests, waiting in the Red Room, where the President gave his arm to Mrs. Lamar and they went out to dinner ! This might have been disconcerting to less intrepid souls, but the Lamars were in an heroic mood and thought nothing of eating two dinners—or even three—if it were a part of their official duty. They avoided looking at each other, but displayed very creditable appetites, and the party arrived, in good season, at the Belasco Theatre.

Neither Justice Lamar nor his wife had ever before shared a box in a Washington theatre with a President of the United States. And to step, suddenly, from the dark entrance into the brilliantly lighted box; to hear the orchestra crash into the opening strains of *The Star Spangled Banner*, while the whole audience rose and applauded, was a breath-taking experience.

It was by a very narrow margin that they escaped missing their first Judicial Reception at the White House. The invitations, which were issued just before their arrival in Washington, had not reached them. They had very recently moved into their new house and were preparing for a quiet evening at home, when the telephone rang and the Society Editor of one of the daily papers wanted to know what Mrs. Lamar would wear to the Judicial Reception that evening. Imagine the speed with which they arrayed themselves in

purple and fine linen, and joined the other members of the Court for their official entrance at eight o'clock—a little breathless, it is true, and glad, for once, that their places were in the rear.

But they were ready for their first Judicial Dinner, which occurred on the last day of January, 1911. They went in with Mr. Justice and Mrs. Hughes. Justice Hughes told Mrs. Lamar that the year before, he had been present, as a guest, at the first Judicial Dinner given by President Taft, and when he said how little he had then expected to attend the next one as a member of the Court, Mrs. Lamar rather obviously replied that if he were surprised to find himself there, perhaps he could imagine their amazement at their presence. Democrats! From Georgia! The Justice said that he thought he could understand how they felt about it. It reminded him of a story of a class of little boys whose teacher asked all those who wanted to grow up to be President of the United States, to hold up their hands. All the little hands went up save one. "My son," asked the teacher, "wouldn't you like to be President of the United States?"

"Please ma'am," was the reply, "I'm a Democrat!"

Among the guests at the dinner that evening was the daughter of a friend of the Lamars' who was visiting Miss Helen Taft. She had gone to the White House from Justice Lamar's house, taking her old negro Mammy with her in lieu of

a maid—a luxury that she did not possess. Mrs. Lamar explained this to Justice Hughes, and told him that, hidden away somewhere, the old Mammy was undoubtedly a spectator of the scene. That nothing could prevent her from lurking behind some door, or other blind, to look on. And sure enough, as they went down stairs for their wraps, the old woman darted from behind a tall rubber plant, and excitedly shook Mrs. Lamar's hand. Mrs. Lamar presented her to the wife of the Attorney General, who was standing near, and who shook hands with her cordially. Upon her return to Savannah, the old Mammy boasted of this fact, and remarked to an admiring audience: "I has done what no niggers an' few white folks has ever did. I has sat in the President's chair an' et out'n a plate what cost a hundred dollars a dozen."

Justice Lamar was frequently thrown with the Attorney General, Mr. George W. Wickersham, a delightfully stimulating companion. The Justice and Mrs. Lamar would go to the Wickersham's for small dinners, when they would spend the after-dinner hour in the cozy sitting room on the ground floor of the Wickersham house on Sixteenth Street. Mrs. Wickersham would take up her workbasket, the guests would dispose themselves comfortably, and the conversation, left to itself, would follow the unexpected and deeply interesting paths that open up so easily when people with congenial tastes are together.

Among the earliest friends that the Lamars' made, on coming to Washington, was Mrs. Thomas F. Bayard, the widow of the distinguished Senator, Statesman and Diplomat, who was our first Ambassador to Great Britain. Mrs. Bayard seemed to be the one fixed personality among the shifting, kaleidoscopic population of Washington. As stationary as the Monument. For she lived in the house in which she was born; a delightful house on H Street, facing LaFayette Square, which had always been her home. Justice Lamar sat next her at a dinner, soon after his arrival in Washington and endeavored, by adroit questions, to learn whether she was "the" Mrs. Bayard. In the course of their conversation she remarked, casually, "I was a Clymer." It happened that he did not then know of the distinguished family of that name, and Mrs. Lamar will not soon forget his involuntary look of consternation at her admission. Mrs. Bayard kept up her intimacy with the personnel of the British Embassy and with English people, and Justice Lamar sometimes enjoyed the privilege of acting as host at the pleasant little dinners that she gave to distinguished English visitors. For a dinner in Washington always has a host and a hostess. It is a very sacred function, with which nothing, save death, is allowed to interfere. If the master or the mistress of the house is out of the city, or even seriously ill, a substitute is always provided, and the dinner proceeds.

The members of the Diplomatic Corps were a source of unfailing interest to Justice Lamar. He often managed, in the course of one dinner, to obtain an amount of valuable information as to the customs, literature, courts, schools, railroads, elections—and other details, if there were any left—of their countries, that would have been the despair of the most accomplished German spy a few years later. The diplomats responded, eagerly, to his friendly and intelligent interest. The Russian Ambassador recommended the best translations of Gogol's novels. The Argentines explained their railroad system, their compulsory vote, and described the splendors of their Palace of Justice, which they considered so much finer than any of the public buildings in Washington.

Judge Lamar admired the dignity and poise of the Chinese. Unlike the women of the other Foreign Legations, the Chinese ladies wore their native dress, which was very picturesque. They never spoke a word in English, and very few—in his hearing—in any other tongue. They went everywhere, paid their proper calls and stood about at entertainments, utterly unmoved by what went on around them. When two or three Americans were present they would fabricate conversations among themselves which pretended to include the Chinese. But the foreigners seemed to be just as well pleased when no such effort was made.

The Japanese on the other hand, wore European clothes and spoke English fluently. The Baroness

Uchida was a graduate of Bryn Mawr. She came to a dinner at the French Embassy, one evening, in a kimona, which was very becoming, though she apologized for it by saying that she had a cold and was afraid to wear an evening gown. The Viscountess Chinda, whose husband succeeded Baron Uchida, insisted that the European dress, even the corset, was much more comfortable than the stiff kimona.

M. Jules J. Jusserand, the Ambassador of France, was especially kind to Judge Lamar. The evening after the Justice arrived in Washington, they met at the reception at Justice Lurton's. M. Jusserand was attracted by the French name and made himself particularly charming, as he knew so well how to do. The Lamars congratulated themselves upon acquiring so pleasant an acquaintance and looked forward to other meetings. But for some time nothing happened. They wondered why. It did not occur to them that they themselves were at fault. It had seemed to them that they had hardly taken off their hats, upon arriving in Washington, before the British Ambassador and Lady Bryce had left cards and an invitation to dine, and they innocently assumed that this was the usual procedure. After a while they discovered their error, made their first call, properly, at the French Embassy, and from that time there was no cessation in their pleasant intercourse.

The British Ambassador and Justice Lamar were

often together, and found each other congenial companions. They had long and interesting discussions on the changes that had occurred in American law since the time when the common law of England was the only law of force in this country. The Ambassador was unusually well informed about the United States. He was an authority on everything connected with its history. Lady Bryce told an amusing story of an argument she had once had with a fellow passenger on ship board, about a point in the constitutional history of this country. He did not know who she was and to settle the controversy and put her in her proper place, he finally told her that Bryce said thus and so in his *American Commonwealth*, which put an end to the discussion.

Lord Bryce took a deep interest in the city of Washington, and used to deplore the fact that the beautiful country which is now known as Massachusetts Avenue Extension was not included in Rock Creek Park. Justice Lamar met him in that neighborhood one day when the steam shovels were levelling the hill tops and uprooting large trees to create this addition to the Avenue and together they lamented the destruction that was going on. The Ambassador was an inveterate walker, and the Lamars sometimes met him miles away from home climbing the hills about Washington. Nor did he follow conventional usage in the hours he chose for his walks. One snowy, stormy night in the winter of 1911-12, the Lamars and the Bryces

had been dining together with Mr. and Mrs. Charles Francis Adams. When the time came to leave, the weather had grown even more severe. Horses were stumbling and slipping, automobiles were skidding and the sidewalks were impossible. The Lamars were thankful for the shelter of a closed car, but His Excellency, the British Ambassador seemed to feel the need of exercise, and right down the middle of the street he trudged, alone, disdaining the use of the Embassy limousine while he took his daily constitutional at eleven o'clock at night.

Mr. and Mrs. Adams lived in a roomy house on Massachusetts Avenue which Mr. Adams said he had bought because it was a "trap for sunshine." The Adamses entertained often and charmingly. Theirs was one of the houses where Justice Lamar was apt to meet the British Ambassador and Lady Bryce, and where, at dinner one evening, Mrs. Lamar sat next to Mr. Frank Millet, the artist. They spoke of their friend, Archie Butt; of his ability, and of his many lovable qualities. Archie was then studying for promotion in the army, and had telephoned to Mrs. Lamar, a few days earlier, to say that he had passed his examinations and won his majority. Mr. Millet was glad of this, for he thought there was no future for Captain Butt as an aide to the President. He told her that he and Archie were going abroad in the spring, for a much needed rest.

Frank Millet and Archie Butt! Was there no

wireless to warn them of the tragic fate that awaited them when the *Titanic* went down, not many months later!

No account of the Diplomatic Corps, during President Taft's administration, should fail to mention the Minister from the Netherlands, *Jonkheer J. Loudon, Envoyé extraordinaire and Ministre plenipotentiare de S. M. la Reine des Pays Bas*, as his visiting card announced; a card with more literature on it, perhaps, than any of the cards that were left at Justice Lamar's door. Madame Loudon, before her marriage to the Minister, was a Miss Eustis of the well-known Eustis family of New Orleans. She was an accomplished musician. She bought an old, well-designed house on F Street, removed the partitions between the two large drawing rooms and inclosed, with glass, a porch in the rear, upon which two long windows opened. In this spacious salon she gave most delightful musicales. The most charming numbers were the duos she sang with the Minister; for next to the pleasure of hearing their well-harmonized voices, was that of looking at the distinguished couple while they sang.

When the spring "came in a sunlit shower of rain," the Lamars were entranced by the beauty of the city, its gardens and its parks. There was an ordered and lovely procession of blooms beginning with the Chinese magnolias on H Street, and the azaleas and forsythias on Massachusetts Avenue Terrace, in front of the German Embassy;

followed by the clusters of glowing hyacinths on Scott Circle and the Japanese Cherries on the Speedway. And there was that one unutterably lovely moment, in Rock Creek Park, when the Judas tree has not shed its blossoms and the dogwood is just opening. Whenever they went out in Mrs. Lamar's useful electric car, they found time for a dash around the Tidal Basin, out to the Soldier's Home, up towards the Falls of the Potomac, or at least, past some of the gardens, the walled gardens, on Sixteenth Street and H and I Streets.

They heard the well-known songs of red birds, blue birds and thrushes, and the note of the song sparrow with which they were less familiar. The squirrels in the grounds of the Capitol would be waiting for the Court to adjourn and the Chief Justice to appear—one is sure that they miss him now. From day to day Madame Jusserand would distribute the remnants of a feather boa from her window, for the English sparrows to use as building material. Justice Lamar exchanged many confidences with her about birds, though he could not share her enthusiasm for English sparrows.

During the spring, and indeed more or less throughout the winter, the Lamars were looking at houses; first, for temporary quarters, which they found on Massachusetts Avenue, and later for a permanent home. Many of the old Washington houses are charming, each with an atmosphere

of its own; longing to be loved and cared for, as Barrie said of old furniture. The Lamars considered several on F and G Streets. But those they wanted, they couldn't have, and those they could have, they didn't want, and they were obliged to look elsewhere. They finally bought a house on the corner of New Hampshire Avenue and S Street—Number 1751—and here they lived during the rest of their stay in Washington. It is a well-built, comfortable house, and Justice Lamar was delighted when he found that the partitions were all of brick or cement—not at all because this made it practically fireproof, but because it made it more difficult for his wife to cut doors and move partitions.

During all the years that they lived in Washington, Mrs. Lamar's affections were secretly fixed on Georgetown, where there are wonderful old houses, with wide lawns and fine old trees; places which needed only a little cultivation to become again the charming, social settings that they once were. But the great obstacle to Georgetown, in those days, was the want of a suitable bridge over Rock Creek. There were then only two bridges leading to Georgetown proper; one on Pennsylvania Avenue, and the other on P Street, and both were unsightly. But the handsome Q Street bridge was under contemplation, and later, under construction; and Mrs. Lamar had resolved that when it was finished and the approach on the far side a little improved, she would move across to

Georgetown and live in one of those old houses with an acre or two of yard about it. With this end in view, she was, for three years steadily blasting her way through her husband's opposition; knowing from past experience that the vigor with which he combatted any change in their surroundings was only equalled by his enthusiasm over it, once it was an accomplished fact. The contest over moving to Georgetown was carried on during the early part of the World War, and whenever Mrs. Lamar succeeded in overcoming one of his objections, the Justice would say: "Well, you took a trench!" But the first time Mrs. Lamar drove over the Q Street bridge was during the last month of her stay in Washington.

The Supreme Court adjourned for the summer on the twenty-ninth of May, 1911, and the Lamars went back to Augusta, to their house on the Sand Hills. Here they spent two happy weeks meeting familiar friends and visiting familiar places. On the seventeenth of June they returned to Washington to attend the Silver Wedding of the President and Mrs. Taft, which occurred on the nineteenth. The beautiful gardens south of the White House, where the party was given, were at their loveliest. The weather was perfect and the scene enchanting. Innumerable Japanese lanterns glowed among the leaves of the trees and the music of a hidden orchestra added the final dreamlike effect to the beauty of the night. The friends of the President and Mrs.

Taft came from all over the country to congratulate them upon the anniversary.

The same evening the Lamars continued their journey to New Haven, where Justice Lamar was to receive the degree of LL.D. from Yale University. At New Haven they were the guests of Mr. Bristol, one of the Trustees of the University, and his sister, Miss Mary Bristol, in their pleasant, homelike house on Hillhouse Avenue. There were many delightful entertainments but the crowning event was Commencement Day, which occurred on Wednesday, June twenty-first, at Woolsey Hall. Professor Bernadotte Perrin, who conferred the degrees, was an expert in the gentle art of paying compliments, and delivered each diploma with a brief, but artistic eulogy of the recipient. In spite of the fact that Mr. Lamar was the most modest of men—or perhaps because of it—he enjoyed being praised as much as any one. His friends remember hearing him say that if he knew a shop where they sold compliments he would go in and order five dollars worth of rank flattery! But in spite of this inordinate appetite for applause, he was rather abashed by Professor Perrin's remarks, and Mrs. Lamar believed that she enjoyed them more than did her husband.

From New Haven the Lamars returned to Augusta to dismantle their house on the Hill and to move their effects to Washington. They came back in the autumn, warmed by the welcome they

had enjoyed at home, to the house on New Hampshire Avenue, which brought them into a very pleasant neighborhood; not far from their friends, Mr. and Mrs. Boardman and even nearer to Mr. and Mrs. Thomas Nelson Page, whom the Lamars had known many years earlier. The Pages had given their prospective neighbors a dinner during the previous spring. It proved to be one of the hottest nights of the season, but the weather notwithstanding, it was one of the pleasantest they attended. A number of agreeable people were invited, among them Mr. Page's brother, Mr. Roswell Page, of Hanover County, Virginia; General and Mrs. Leonard Wood; Mr. Townsend (Chimmie Fadden); Mrs. T. P. O'Connor, the wife of "Tay Pay," the Irish Patriot—herself an author—Mr. Underwood, then a representative from Alabama; and others less well known but no less delightful. After dinner they sat on the balcony overlooking the elms on New Hampshire Avenue and enjoyed what Mr. Van Dyke calls one of the best things that life can offer, "a little good conversation."

The following spring, on Sunday morning, April fourteenth, 1912, Judge Lamar was wakened by the call of extras on the streets. The S. S. *Titanic*, the largest ship afloat, on her maiden voyage, had struck an iceberg off the coast of Newfoundland, and had gone down. The fate of her two or three thousand passengers was unknown. Among them were Archie Butt, Frank

Millet, and Clarence Moore of Washington; besides John Jacob Astor, Mr. and Mrs. Isidore Straus, Harry Widener, and many other well-known Americans.

The city held its breath in horror and fear for one long day and night; then by wireless from the *Olympia* came the welcome news that all the passengers were saved and that the ship was being towed into Halifax. The reaction was as complete as it was sudden. People quoted old sayings to the effect that first news is always false and Washington went to bed that night in a spirit of thanksgiving. At midnight, Justice Lamar was roused by fresh cries of extras, but he was so sure that it could only be news that the ship had reached Halifax, that he went back to sleep. But that ever-present, subconscious self, which knows so many things of which we are ignorant, roused Mrs. Lamar before daybreak and in the early morning, she stole downstairs in the dark to find the morning paper on the door step. The *Titanic* had gone down before the first rescuing ship could reach her. There were not enough boats; and only some six or eight hundred of her three thousand passengers had been saved. Most of the saved were women and children. But no names were given.

The suspense that day was terrible. Washington was like one large family, seeking tidings of its own. Everything else was laid aside. People gathered at unusual hours and in unaccustomed

places to talk of their friends, to cling to whatever hope was left. But during the day, President Taft put into words what everyone felt. "*Archie is dead,*" he pronounced. "*If any were lost, he would not be saved.*"

When the details became known, memorial services were held at all the churches and at many other public places. At the Auditorium of the New National Museum, Senators Root and Lodge, and Charles Francis Adams made eloquent addresses in memory of their friend, Frank Miller. The pall of grief that settled over the city was slow to lift—if it ever lifted for some of the citizens.

Early in November, 1912, every one knew the result of the election, and every one commented on the admirable way in which the President and Mrs. Taft bore themselves during the last, trying months of their stay in the White House. Socially, their one concern seemed to be to give the greatest amount of pleasure to the many whom they had made welcome there during the past four years. The State Dinners and Receptions at the White House, that season surpassed all the others in brilliancy. Mrs. Lamar wrote this entry in her journal for January twenty-first, 1913:

"Midnight.

"Just back from the Judicial Dinner, and a wonderful one it was. Eighty guests, many of

them distinguished lawyers from Philadelphia, New York, Cleveland, Detroit, Cincinnati and other cities. Mr. Joseph Choate among them, who told me that when women had all their rights—including a seat on the Judicial Bench—he hoped the lady who sat opposite him at dinner would be among the first appointees. It would relieve the tedium of a legal argument, he said, if he could look at her during its progress. The table was a semi-circle, with guests seated on either side, and was decorated with pink carnations. A wonderful menu as well. It was noised abroad that the President had said this was going to be 'some dinner,'—and it was. A musicale followed, in the East Room, and Miss Wynne sang Folk Songs delightfully. She was dressed in the fashion of 1850—a green flowered silk, with crinoline, and her hair parted and combed in bands over her ears. She sang with great naïveté and charm.—A great many compliments to Mr. Lamar's opinion in the L. and N. case, yesterday. It was noticed at length in the *Sun* and other New York papers."

The fourth of March was approaching, and Washington was very reluctantly making up its mind to say good-bye to the President and Mrs. Taft. They were much beloved in the city, and they were besieged with invitations. Among the many farewell dinners, was an interesting one given to them by Senator and Mrs. Newlands at

Woodley—an old Colonial house on Woodley Lane, once occupied by President Cleveland. The day happened to be General Crozier's birthday and he was among the guests. A cake with innumerable candles was placed before him. He cut it and got the ring, which they all considered a good omen, and his marriage to Miss Williams which occurred in London the following October, was the culmination of one of Washington's favorite romances. "Justice Hughes got the thimble," Mrs. Lamar's journal concludes. "We all went to a musicale at Mrs. Marshall Field's . . . McCormack sang and Zimbalist played."

And before Washington had realized the fact, the month of March had come. The city was crowded with visitors for the Inauguration, and on the third of March "The Court and Ladies" went, by appointment, to say good-bye to the President and Mrs. Taft.

On that evening, Mr. and Mrs. Boardman gave a notable entertainment to the retiring President. Dinner was served in the large library of the Boardman house where a great many guests were seated. After the dinner they drank their coffee in the drawing room, and presently returned to the library where they found a transformed scene. The dining table had disappeared and the room was filled with chairs and small tables at which refreshments were to be served later in the evening. The dining room in the Boardman house is three steps higher than the library, from which it

is separated by portières. They had been drawn aside and the dining room converted into a woodland scene which made an appropriate background for the singers in a concert, which followed, of Folk and Native Songs of other lands. The singers were dressed in native costumes and their songs were interspersed with "tableaux chantants." The music and the tableaux were enchanting. Justice and Mrs. Lamar had the good fortune to go out to dinner with the British Ambassador and Lady Bryce and they sat together during the concert. It was a brilliant occasion. But through the music and the singing one heard the sadness of farewell and felt the coming parting from valued friends; the close of a chapter full of interest and charm.

But every one followed the lead of the President, and wore a smiling face as the curtain fell on the administration.

## CHAPTER XIII

### THE WILSON ADMINISTRATION

PRESIDENT WILSON's Inauguration was the first that the Lamars had ever seen. But aside from the impressiveness of the great, national pageant, with its profound appeal to the pride and patriotism of every American, one of the outstanding facts which it emphasized was the permanence of the Supreme Court. President succeeded President; or, as some one put it, a President became a school teacher and a school teacher became a President, in the space of an hour! The genial and popular Vice-President had been removed by a Higher Power than the electorate of any nation; but a new figure now occupied his vacant seat. Cabinet members gave place to others; the Sixty-second Congress passed into history, and the Sixty-third succeeded it. But the Court remained in its appointed place; the one unchanging branch of the Government, whose uninterrupted and continuous existence dates from 1789 when it was first organized with seven members.

There was an illustration of the permanence of the Court, on Inauguration Day, which had its amusing side. While the long procession from

the Senate Chamber to the East front of the Capitol was slowly forming, a few women, wives of the members of the Court, had repaired to the empty Court room to eat a hurried luncheon. In the midst of their repast, they were startled by the entrance of the Marshal, who always bore himself, when marshaling the Court, as though he were preceded by the Marine Band, and followed by a regiment of horse. The women hid their luncheons and hastily rose to their feet, as the Chief Justice came in and solemnly opened the Court. He immediately adjourned it and walked out again, leaving them much mystified by the ceremony. It was explained to them, later, that but for the minutes of the Clerk—which would record the fact that on the fourth of March, 1913, the Court was opened at noon by the Chief Justice—there would be an absolute break in the official records of the Government of the United States, until the newly elected President took the oath of office. It did not appear what disaster would have befallen the country if this catastrophe had occurred. But—it did not occur!

Back in 1870, after President Wilson's father had left Augusta, the two boys—Tom Wilson, as he was then called, and Joe Lamar—had lost sight of each other, and Judge Lamar did not, at first, recognize his former school-mate in the Governor of New Jersey. But Mr. Wilson had not forgotten. When Justice Lamar wrote to

congratulate him upon his election, Mr. Wilson, after beginning his reply, "My dear Justice Lamar," had written: "It is hard for me to begin this letter without saying 'My dear Joe,' so vividly do I remember the many times when you and Philip and I played together."

Justice Lamar, therefore, looked forward, with pleasure, to renewing the acquaintance of so many years ago. When he went, with Mrs. Lamar, the day after the Inauguration to leave cards at the White House, it was almost a shock, though a pleasant one, to see the same butler and footman at the door; two handsome negroes in livery, whom Mrs. Taft had installed there, and who beamed with impartial hospitality upon all visitors—Republicans and Democrats—like the rain falling on the just and the unjust. They evidently had their instructions, and each visitor was shown into the Green Room, where an aide (another familiar figure in the midst of change) ushered them into the Red Room where Mrs. Wilson was receiving, with her daughters. The room was filled, but not crowded. There were familiar faces and new ones; members of the previous administration and those who had been habitués of the White House during many administrations. There were also friends of the President and Mrs. Wilson, who had come to Washington for the inauguration, and who were loath to leave the interesting scene. Mrs. Wilson greeted the Justice and Mrs. Lamar cordially

and commented upon the fact that among the few persons whom her husband knew in Washington, two were members of the Supreme Court—Justice Lamar and Justice Pitney. Presently from a side door, President Wilson came in; as quietly and with as little ceremony as though he were the least important person in the room. Mrs. Lamar, who happened to be standing near the door by which he had entered, introduced herself to him, and he immediately asked for her husband. The President and Justice Lamar met and greeted each other as old friends, and at once began to recall their boyhood together in Augusta more than forty years earlier. There was nothing in their reminiscences to suggest that these lads had been destined from the beginning for the exalted positions which they now filled. Their talk was of the usual boyish experiences.

The President remembered that when the two Lamar brothers used to fight each other—as brothers always have and probably always will—Joe, who never took the combats very seriously, was unable to control his desire to laugh. This always roused Phil to an added fury and sometimes provoked another quarrel.

One does not unduly prolong a conversation with a President of the United States. There are always too many persons anxiously waiting their turn, and the Lamars soon said good-bye and took their leave. But not before President Wilson had again expressed his pleasure over this renewal of

an old friendship and said that he hoped to see more of them in the days to come.

Although the season just before the inauguration had been the most crowded that the Lamars had experienced in Washington, none of the numerous invitations which they received were for a later date than March the third. If the world had been timed to come to an end on the fourth of March, no one would have had to break any social engagement in order to respond to the call of the Last Trump. But Inauguration Day had scarcely ended before a series of informal entertainments began. One was called to the telephone and asked to dine or to lunch, by the same people who had issued the most formal invitations during the preceding weeks. Everyone was busy, entertaining guests who were in town for the inauguration, or members of the new Cabinet, or other officials of the new administration. On the fifth of March Mrs. Thomas Nelson Page telephoned to ask the Justice and Mrs. Lamar to dinner that evening to meet Colonel and Mrs. House from Texas. An invitation which they gladly accepted. There were only a few other guests; Mr. and Mrs. Hugh Wallace—a daughter and son-in-law of former Chief Justice Fuller—Mrs. Page's cousin, Miss Bryan, and Judge John Barton Payne. Mr. House's fame had preceded him, and Washington was anxious to make his acquaintance. He seemed to share their wish, for everyone was impressed by his eager interest in

everything that took place around him, as well as in all the people whom he met.

Meanwhile the former President and Mrs. Taft, simple American citizens once more, were in Augusta. They had gone, immediately after the inauguration, to the Sand Hills, where they spent the early spring days as the guests of the city, and the mail brought frequent echoes of their visit to Justice Lamar.

It is always "hail and farewell" in Washington, and there were other changes impending besides those in the White House and the Capitol. To the regret of everyone who knew him, and of multitudes who did not, save through his books, the Ambassador from Great Britain and Lady Bryce, were returning to England in April. They gave a farewell dinner on April ninth, to which only a few friends were asked, and Justice and Mrs. Lamar were proud to be of the number. The dinner was followed by a large reception, on April twelfth to which all Washington thronged to say good-bye. It is doubtful if any ambassador ever left so many warm friends behind him as did James Bryce, when he left the United States.

The personnel of the new Cabinet had been kept secret until Inauguration Day. Everyone wondered and guessed, but no one knew who they would be. When their names were made known Washington hosts and hostesses, in Washington's own cordial way, hastened to show them every attention and to make them welcome. On the

thirteenth of April the Lamars dined with Mr. and Mrs. Hugh Wallace to meet the new ambassador to Great Britain and Mrs. Walter Hines Page. Among the other guests, were the Secretary of the Interior and Mrs. Franklin K. Lane; the Attorney-General, Mr. McReynolds, who later succeeded Justice Lurton on the Supreme Bench; the Secretary of Agriculture, Mr. Houston; and Colonel and Mrs. House. Mr. Secretary Lane had been a member of the Interstate Commerce Commission, and both he and Mrs. Lane were well known and very popular in Washington. The other members of the Cabinet were rapidly making friends.

One afternoon, in April, when a number of teas and receptions were on the calendar, a continuous downpour caused the hostesses to order the long, dark, canvas awnings which are the inevitable accompaniments of a party in wet weather. But no sooner were these dismal tunnels in position, than the sun came out and shone brilliantly. The Lamars met Mr. Secretary Bryan, at several of the parties given that afternoon and reproached him with the fact that a brand-new administration couldn't control so simple a thing as the weather. "But this isn't real Democratic weather," he explained. "We are just using up some odds and ends left over from the last administration. Wait till we begin using our own weather, and then you'll see sunshine."

But his promise was not fulfilled. The new ad-

ministration seemed to encounter rough weather from the beginning. Mr. Wilson came to the presidency at a critical time. There was friction with Japan over the anti-alien ownership law in California, which excluded the Japanese from acquiring land in that state. Japan issued a protest, and the Secretary of State, William Jennings Bryan, made a hurried trip to California in a vain attempt to secure a modification of the terms of the statute. Many persons felt anxious when they realized that the Panama Canal was not yet finished, and that if Japan had any warlike intentions, this was the opportune time to put them into execution. During all of the year 1913 there were threatening gestures from Mexico. The government of General Victoriana Huerta had not been recognized, either by President Taft or by President Wilson, and the General was growing restless and was issuing ultimatums. One forgets now, what they were, but the situation was considered so critical that those senators who were members of the Foreign Relations Committee of the Senate would not leave Washington during that summer, even for a week-end vacation. Some of the superstitious remembered that this was the year 1913, and a good many drew a sigh of relief when it was over. So little could they read the handwriting on the wall.

On the sixth of June, 1913, Justice Lamar read in the *Washington Post* that Mr. Thomas Nelson Page had been appointed Ambassador to Italy.

The Lamars went, from the breakfast table, to offer their congratulations. They found the Page house closed apparently for the summer. The front door was boarded up, and there was no way of ringing the door bell. They went home and tried the telephone with better success, and conveyed their good wishes. A few minutes later, Mrs. Page telephoned to say that they had expected to leave Washington that day, for an absence of several months, but the news of the President's appointment had changed their plans. It was the anniversary of their wedding day. Would the Lamars come to dinner that evening in a dismantled house? Needless to say, the invitation was promptly accepted. There were only two other guests at the dinner; the Senator from Virginia and Mrs. Swanson. And again, as they had done two years earlier, the company sat on the balcony overlooking New Hampshire Avenue, and enjoyed some very interesting conversation. The Lamars were glad of the honor paid their friend, Mr. Page, but very loath to see him leave Washington.

The following spring it happened that Ex-President Taft and the Secretary of State, Mr. Bryan, dined together at Justice Lamar's house. It was the first time that they had ever met socially, and after the dinner, Mr. Bryan drew Mr. Taft into a corner and told him that he wished to say how much he admired the way in which Mr. Taft had taken his defeat. He enlarged upon the theme, using the same term, "defeat," until

Mr. Taft replied, good humoredly, "Well, Mr. Secretary, 'praise from Sir Hubert Stanley is praise indeed,' and such a compliment from a man who has had as much experience as you have had, . . ." It was not necessary to finish the sentence. Mr. Bryan knew how to enjoy a clever retort, even at his own expense. Mr. Taft repeated the conversation to the Justice and Mrs. Lamar, a little later, as he did, perhaps, to others. Mr. Bryan also may have mentioned it. At all events, it went the rounds; furnishing an illustration of the robust longevity of Washington witticisms, which play to crowded houses in the city, for a season, and then tour the country, like popular plays from New York. The Lamars did not repeat it, but they heard it at most of the dinners which they attended that year; it was printed in the *Washington Post*, as having been told by a former senator from a western State, on a visit to Washington. It was told in Atlanta, Georgia, in 1918, and it went echoing down the years to join the company of those immortal anecdotes which "were not born to die."

In April, 1914, matters reached a crisis in Mexico. The country was in the throes of a revolution. General Huerta, finding that no notice was taken of his ultimatums, proceeded to act. There had been several incidents which had indicated his unfriendly attitude toward the United States, and a deliberate intention to subject her officers to insult, but these incidents culminated

in the arrest, on April ninth, of the Paymaster and a company of Marines from the U. S. gun-boat, *Dolphin*, at the Iturbide Bridge landing at Tampico, Mexico. The arrest was made by a subordinate officer of Huerta's army, who was parading the Americans as prisoners through the streets of Tampico, when he was met by a superior officer and ordered to return to the landing with his prisoners to await instructions there. In a short time the Marines were set at liberty. It was explained that martial law prevailed in Tampico, and that orders had been given that no one should land at the bridge. The Mexican General Zaragoza apologized and General Huerta expressed regret. The American officers had not been notified of this order, and Admiral Mayo, the American Officer in command, looked upon the arrest as an intentional insult to the United States, and demanded, in addition to these apologies, that the American flag should be saluted with official ceremonies. Huerta refused to comply with the demand, and at this stage the matter was referred to President Wilson, who immediately ordered the American fleet to Tampico. Notes were exchanged, and Huerta agreed to salute the American flag if the salute were returned; but the President demanded an unconditional salute by a certain hour on April nineteenth, which Huerta refused. At the same time it was reported, in Washington, that the German steamer, *Kronprinzessin Cecelie*, was nearing Vera Cruz,

carrying arms and ammunition which Huerta had ordered for use in the war which he was waging with General Carranza and the Constitutional Army. Should war be declared between the United States and Mexico, and should these munitions be landed at Vera Cruz, they would doubtless be used against the American forces. Which fact added to the tenseness of the situation. The President gave notice that he would address Congress, on the twentieth of April, in the Senate Chamber. The news spread rapidly, and at the appointed hour the Senate galleries were crowded. The members of the Diplomatic Corps seldom occupied the seats reserved for them in the Senate gallery, but they were all filled on this afternoon. The Latin Americans were present in force, as well as the French and British Ambassadors, with Madame Jusserand and Lady Spring-Rice. The German, Japanese and Spanish Ambassadors were in their places, and the Ministers from Denmark and Belgium.

The President appeared at three o'clock and read his brief message recounting the events that had led to the present crisis. He was heard with breathless interest, but his audience, in the galleries, were so much exercised over the situation, that the message, asking for authority to take measures "short of war," sounded a little cold; and the debate which followed his departure from the room showed that many on the floor shared the opinion of the galleries.

Congress was not slow to act, however. A resolution was offered in both Houses, and the only debate was inspired, apparently, by the desire of certain members to declare unconditional war upon Mexico. Meanwhile the American Marines had been ordered to occupy Vera Cruz to prevent the landing of the ship with munitions of war. The next day, April twenty-first, the extras announced that four marines had been killed and twenty-five wounded, in taking Vera Cruz. Mrs. Lamar went to the Capitol that night to hear the debate on the Senate Amendment to the original resolution, but though her party was provided with special tickets, the crowds in the hall were so great that she could not get near enough to the doors to present them. The amendment passed, and the resolutions finally adopted were:

“RESOLVED: That the President is justified in the employment of the armed forces of the United States to enforce his demands for unequivocal amends for affronts and indignities committed against the United States. Be it further

“RESOLVED: That the United States disclaims any hostility to the Mexican people, or any purpose to make war upon them.”

Which resolutions, contrary to the wishes expressed by some of the debaters in Congress, narrowed the matter to a conflict between the United States and General Huerta and his army.

The halls of the Capitol were crowded with an anxious multitude. There were mothers who had sons in the army or the navy, whose fears were pictured in their faces; and others who were merely inspired by curiosity or a love of excitement. On April twenty-second, Nelson O'Shaughnessy, Chargé d'Affaires at Mexico City, received his passports.

The Lamars were giving a dinner on the twenty-fifth. The invitations, which had been issued some weeks earlier, included two ranking Generals, the Quartermaster General, the Assistant Secretary of War and Miss Boardman, the acting head of the Red Cross. A goodly number of these military guests sent excuses, at the last moment, as they were detained at their offices until far into the night by the exigencies of the situation. The guests who came talked of nothing but the prospects of war, and the kind of endless guerilla warfare that it would be, with no glory to our arms, but death, in many guises, to our men.

The next day, Sunday, the *Washington Post* had a war map of Vera Cruz and the Bay, showing the position of the numerous American battle ships and gunboats assembled there, and the route the American troops would take to march from Vera Cruz to Mexico City.

Into this tense atmosphere, came a proffer of mediation by the three South American Republics; Argentina, Brazil and Chile. President Wilson immediately accepted it, and a calm descended

which was as grateful as a lull in the midst of a thunder storm. Everyone drew a breath of relief. Indignant as we were over the Tampico incident, no one wanted to go to war with our neighbor if there were any honorable way of avoiding it. And this was not only honorable, but in keeping with all of our best traditions for substituting arbitration for the trial of arms and "the senseless argument of cannon." It had the added advantage of strengthening the ties of friendship between the United States and the South American Republics. And they were then in need of strengthening.

But while the feeling of relief in the United States was great and instantaneous, it was as nothing to the effect that President Wilson's action had in Central and South America. A young official, who happened to be in a South American city when Vera Cruz was taken, told Justice Lamar that the feeling against the United States was so bitter that it was hardly safe for an American to be seen on the streets. The South Americans really believed that the United States Government intended to make this incident a pretext for conquering and annexing Mexico and Central America, and that their turn would come next. When they learned of President Wilson's acceptance of the offer of the A.B.C. countries, the transformation was amazing; American flags were run up; the United States was cheered on the streets; and the young American was seized and carried

on the shoulders of a yelling, rejoicing mob, which had been ready to tear him in pieces a moment before.

There was some speculation as to what Huerta would do. He was then fighting a losing battle with the Constitutionalist Army, led by General Carranza. For a time it seemed that he might, as a desperate gamble, choose the alternative of war with the United States in the hope of rallying to his side the jingo element in Mexico. For the Mexicans were always ready to repel imaginary annexation invasions by the United States.

The news of Huerta's decision reached unofficial Washington in an unusual way. Senator Warren, of Wyoming, gave a dinner at the Country Club on April twenty-seventh. Among his guests were Justice and Mrs. Lamar and the Spanish Ambassador, Señor Riaño, who represented Mexico's interests in the United States after diplomatic relations between the two countries had been suspended. While the dinner was in progress Señor Riaño was called to the telephone. He left the table so quietly that only those sitting near him noticed that he had gone. In a few moments he returned and remarked to the group with whom he had been talking, that it was a message from General Huerta accepting the offer of mediation. It was immediately suggested that he should tell the company the news. Some one rapped on the table to secure order, and the Ambassador rose and made a little speech to the

dinner guests informing them of General Huerta's action.

It had been Justice Lamar's experience that such honors as had come to him had dropped out of the clouds, as it were, with no warning of their approach. His first news of them would be a telegram or a line in a newspaper. And Mrs. Lamar should not have been as surprised as she was when she read in a New York paper, a little later, that preparations for the coming conference were going rapidly forward, and that Justice Lamar was being considered as one of the Commissioners who would represent the United States. Presently the telephone rang, and before she answered it, she knew intuitively what the message would be.

Was the Justice at home? Could she reach him by telephone, and would she tell him that the President would be obliged if he would come to the White House as soon as convenient?

She did telephone him, and he came in, soon after, and hurried off to the White House to be gone for an hour. And, as Mrs. Lamar's journal states, would tell them nothing, when he came home, of his conversation with the President.

Other interviews followed with the Chief Justice, the President and with Mr. Lehmann, who was the other member of the American Commission. On the eleventh of May the newspapers announced that Mr. Justice Lamar and the Honorable Frederick W. Lehmann, of St. Louis, were

the two Commissioners who would represent the United States at the Mediation Conference.

Events began to move rapidly. The Dominion of Canada was chosen as the neutral country in whose territory the Peace Conference would be held. The day after the public announcement of Justice Lamar's appointment, the British Ambassador, Sir Cecil Spring-Rice, called to offer the hospitality of Canada to the American Commissioners. From this time forward reporters haunted the house on New Hampshire Avenue. Mr. David Lawrence, of the Associated Press, was a frequent and very interesting visitor, for whom Justice Lamar conceived a great liking. The A.B.C. Conference monopolized the headlines of the daily papers and the pictures of the A.B.C. Ambassadors, and the American Commissioners decorated their front pages.

Justice Lamar had hesitated a little before accepting the appointment. He consulted the Chief Justice, who reassured him as to the propriety of his action. He was reminded that Chief Justice Fuller and Justices Brewer and Harlan had sat upon similar boards and commissions. But he accepted on one condition—he was to receive no fee, of any kind, as a commissioner. He was an officer of the Government, and as such, his services were at its disposal, either on the Bench or as a member of a Commission, without further compensation. The Constitution provides that the salaries of the Judges of the Supreme and In-

ferior Courts shall not be diminished during their continuance in office. It was characteristic of Justice Lamar that he turned the provision around, and decided that his should not be increased.<sup>1</sup>

In accepting the offer of the South American Republics, President Wilson had said:

“This Government feels bound, in candor, to say that the diplomatic relations with Mexico, being, for the present severed, it is not possible for it to make sure of an uninterrupted opportunity to carry out the plan of intermediation which you propose. It is, of course, possible that some act of aggression on the part of those who control the military forces of Mexico might oblige the United States to act to the upsetting of hopes of immediate peace, but this does not justify us in hesitating to accept your generous suggestion. We shall hope for the best results within a brief time, enough to relieve our anxiety lest most ill-considered, hostile demonstrations should interrupt negotiations and disappoint our hope of peace.”

And, accordingly, our forces continued to occupy Vera Cruz, while General Carranza and the Constitutional army continued their advance upon Mexico City.

<sup>1</sup> Mr. Lehmann also served without compensation.

## CHAPTER XIV

### THE A. B. C. CONFERENCE

THE Peace Conference consisted of the Ambassadors from the three South American Republics, the American Commissioners and the representatives from Mexico. The Ambassadors were Mr. Domicio da Gama of Brazil; Señor Don Eduardo Suárez-Mujica of Chile and Mr. Rómulo S. Naón of Argentina. The Commissioners from the United States were Justice Lamar, of the Supreme Court of the United States; the Honorable Frederick W. Lehmann of St. Louis,—Solicitor-General during President Taft's administration; with Percival Dodge, Esq., of Boston—an experienced diplomat—as Secretary of the Commission. The representatives from Mexico were Señors Emilio Rabasa and Augustine Rodrigues—prominent lawyers and lecturers in the Free School of Law of Mexico—with Señor Luis Elguero, a wealthy financier and a director of banks and railways. He was the only member of the Commission who could not speak English. The Mexican Commissioners brought their families with them; because, Mexico was in the midst of a revolution, and it was said, that they could not be sure of finding them on their return, if they were left behind!

The Mexican Commissioners arrived in Washington on the sixteenth of May. They were met at the Station by a representative of the State Department and were the guests of the Department during their stay in the Capital. Various attentions were shown them and on the evening of the sixteenth of May the Spanish Ambassador and Madame Riaño gave a dinner to the members of the Conference. On Tuesday morning, May nineteenth, the American Commissioners arrived at Niagara. The season had not yet begun and they had the place all to themselves.

The three South American Ambassadors, with their suites, and the three Mexican Commissioners, with their families, were installed at the Clifton House on the Canadian side of the Niagara River. At the same hotel were the forty, or more, newspaper correspondents, each with a private wire to his special newspaper. The American Commissioners had their headquarters at the Prospect House, on the American side of the Falls, where they occupied one floor of the Hotel; with private wires, private telephones, secretaries, typists, codifiers, secret-service men and an obliging negro messenger from the State Department, named Macbeth. Justice Lamar always called him Hamlet, even after Mr. Lehmann suggested that he had better say Othello and be done with it!

The Conference sat at the Clifton House, on

the Canadian side of the Falls. The American Commissioners crossed the Niagara River on the Suspension bridge for the meetings of the Conference and the South American Commissioners and the newspaper correspondents crossed to the American side for interviews and consultations. The Mexican Commissioners kept pretty closely to the neutral territory.

Had the State Department been superstitious, it might have hesitated before selecting the Clifton House for the scene of the Conference; for it was here that the representatives of the North and South met, in 1864, during the Civil War, in a vain attempt to restore peace. The Federal representatives, on that occasion, were lodged at the International Hotel, on the American side of the River, and the Confederates on the Canadian side, in the old Clifton House, which was burned in 1898.

The little hotel parlor at the Prospect House, which was placed at the disposal of the American Commissioners, was a narrow room, about twelve feet wide and some thirty feet long. It was upholstered in green plush, and had a green velvet carpet. Some one called it "Early Pullman," and the name clung to it. After the arrival of Mrs. Lamar, Mrs. Lehmann and Mrs. Dodge it was the scene of many pleasant gatherings. There were some very agreeable people among the Mediators and the newspaper correspondents. Mr. and Mrs. Lehmann were inveterate readers

and most excellent company. Mr. and Mrs. Dodge had interesting experiences to tell of their life in Berlin, Japan and the South and Central American Republics, where Mr. Dodge had been stationed as a member of the American Diplomatic service. The newspaper men were frequent visitors, and here began Justice Lamar's ever-increasing admiration for their initiative, skill, good humor, professional pride and all the other interesting and admirable qualities that go to the make-up of an American newspaper correspondent. They could be absolutely relied on to keep a secret; they often knew as much about the most confidential negotiations as the negotiators did themselves; and yet this knowledge would remain securely bottled up in their inner consciousness until they had permission, from the proper sources, to draw the cork. They were always on hand before the curtain rose, and never in the least depressed when it fell again and they were informed that the scene was not for publication. They could spin the most wonderful and convincing narratives and predictions, out of nothing whatever, and they went into the enterprise of mediation, on their own responsibility, loyally determined to make it go.

But the Conference had uphill work from the beginning. It was President's Wilson dream that something might be done for the pacification of Mexico by means of this mediation. Instead, therefore, of confining it to the settlement of the

issues between the United States and Huerta's government, an effort was made to widen its scope. General Carranza, the leader of the Constitutional army, which was then waging a very successful war against General Huerta, was invited by the Mediators to send representatives to Niagara, and accepted the invitation. But here a difficulty arose. The Ambassadors from the three South American Republics insisted that Carranza should declare a truce with Huerta during the progress of the Conference; and this Carranza declined to do. He claimed that the mediation was only concerned with the controversy between the United States and Huerta, and for him to agree to a truce would be playing into Huerta's hands, and could only contribute to Huerta's benefit, through the disbanding of the Constitutional army and the loss of the gains which the army had made.

The three mediators, thereupon, withdrew their invitation. They wrote to General Carranza that they had received his telegram stating that he deemed it inconvenient to suspend hostilities, and that they recalled their invitation as inopportune. And this characteristic reply introduced Justice Lamar to a new use of a familiar word—"inconvenient." The language of Diplomacy has no authorized lexicon but this word, as the Spanish Americans used it, can only be described in its own terms, for it was the most "convenient" adjective between the lids of any dictionary. No

matter what you were asked to do or not to do, it furnished an all-sufficient excuse. It was "inconvenient;" that was enough.

What might have been accomplished had Carranza's representatives been admitted to the Conference, no one can say; but their absence proved to be a blank wall against which the plans for the pacification of Mexico beat in vain.

The State Department has made no public report of the mediation, save the Protocol which was signed and published the twenty-fourth of June, 1914. Many crises arose during the Conference which required careful handling. Some of them were occasioned by the efforts of the Administration to include the pacification of Mexico in the program. Others were due to the attitude of the South American Ambassadors and the Mexican Commissioners and their intense opposition to the presence of American troops on Mexican soil. One could hardly exaggerate their feeling on this subject. The one ineffaceable impression made upon Justice Lamar, as he met and talked with the representatives of the South American Republics, was the intensity of their feeling with regard to the sovereignty of the Central and South American States and their deep seated fear of the United States and of its suspected plans for the annexation of Mexico and Central America.

The American Commissioners were in daily communication with Washington. Long tele-

grams, in code, had a habit of arriving, late in the afternoon; and the experts would decode and issue them, in sections, between nightfall and daylight, so that sleep became a negligible detail to the Commissioners. Justice Lamar was spokesman for the Conference, and every day gave out a bulletin to all the correspondents. It was first submitted to the Mediators, and contained as little information as could be imparted in its few words. But the reporters seized it eagerly, and made it the foundation for as many different stories as there were papers represented; expanding it from their own observations and inferences, which were surprisingly correct.

Justice Lamar was perfectly frank and open with the correspondents and they met him in the same spirit. The public was tremendously interested in the conference, and every action of the Mediators, every chance word that they dropped, was given a microscopic examination. The correspondents would sometimes tell the Justice what inferences they drew from certain words or events and, if possible, he would say frankly whether any of them were correct.<sup>1</sup>

<sup>1</sup> The correspondents furnished the humor of the Conference. They edited a leaflet called *The Mediation News*, which consisted solely of extras, numbered: 999,999, *et cetera*. Some of the issues were very clever. But the most popular contributions to the lighter literature of the Conference were two songs. One of them was written by Mr. Fougner of the *New York Sun*, while riding on a trolley car. It was sung to the air, *When it's Apple Blossom Time in Normandy*, and the words were:

There were almost daily sessions of the conference but between those meetings the Justice and Mrs. Lamar took long walks and drives in the vicinity. They motored, one day, down the river to Fort Niagara, one of the oldest landmarks in this part of the country. For here, at the mouth of the Niagara River, La Salle built a stockade in 1669, and a fortified trading post was established here ten years later. The present name—Fort Niagara—dates from 1775.

The officer in charge very obligingly showed the Lamars over "The Castle," the powder and ammunition houses, the old barracks, dating from colonial times, and the brick breast-works, which were standing when Leather Stocking was fighting the Indians. Time has dealt gently with these

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When it's Mediation Time in Canada,  
In Canada,  
By the good old Falls we'll watch and wait,  
And Mediate.  
When it's Mediation Time in Canada,  
We'll come here for a rest;  
And we'll pay ten cents to cross the bridge  
Whether going East or West.

The second song was a joint composition of Mr. Fougner and Mr. Stiles of the Washington Bureau of the Associated Press. It was set to the tune of Tammany:

Mediate, Mediate,  
First you get a little hint,  
Then you dress it up for print.  
Mediate, Mediate,  
Doping, doping, always hoping,  
Mediate.

reminders of by-gone days, and among those peaceful and quiet surroundings, the Lamars could easily imagine themselves living in one of Cooper's novels, stalking the Redskins, with the Pathfinder as a guide, instead of watching the failing fortunes of Huerta's army.

The officer was especially pleased to meet the Justice; and said that the men at the post were all interested in the success of the mediation, for none of them wanted to fight Mexico. "If we were ordered out against a great nation," he added, "like Germany, for instance, it would be another matter."

As a matter of course, the Conference had its social side. There was much entertaining and delightful parties were given by various clubs and societies, as well as by private individuals, both in Canada and in the United States. A few days after Justice Lamar left Washington, he telephoned to ask Mrs. Lamar if she would join him at Niagara on a certain day. An hour later, Mrs. Dodge, the wife of the Secretary of the American Commission, called her up to read a telegram she had received from Mr. Dodge, saying that the Governor-General of Canada, H. R. H., the Duke of Connaught, was giving a garden party to the Conference on the twenty-seventh of May and their presence was desired for the occasion. Justice Lamar had failed to mention that fact!

Mrs. Lamar and Mrs. Dodge arrived at Niag-

ara on the evening of the twenty-sixth of May, the day before the Governor-General's party. The entertainment was to be given at Toronto, and three special railroad cars were assigned to the Conference for the journey. They were none too many to accommodate the Ambassadors and Commissioners and their suites, as well as the numerous newspaper correspondents. During the journey Justice Lamar and the other Americans in the party grew quite well acquainted with the South American members of the Conference. They admired the beautiful daughters of Señor Rabasa, the Señoritas Ruth, Isabel, Mercedes and Concepción, and enjoyed the exquisite manners of the Spanish American gentlemen who composed the suites of the Diplomats and the Commissioners.

The garden party was given at "Craigleigh," the beautiful home of Sir Edward Osler, a brother of the famous doctor, Sir William Osler of Johns Hopkins University. The party was at five o'clock and at half after four the ambassadors and commissioners, and their suites, had a private audience with their Royal Highnesses, the Governor-General—the Duke of Connaught—the Duchess and the Princess Patricia, which was not unlike "going down the line" at a White House reception. The Governor-General detained Justice Lamar for a few moments' conversation, after the formal audience, and then the members of the Conference took their places on the lawn and watched the other guests—there were said

to be more than two thousand of them—who were received on a veranda overlooking the grounds.

The grounds at “Craigleigh” were very lovely. There were masses of lilacs blooming in every shade of purple and white, beds blazing with tulips, clusters of pansies and blue forget-me-nots. Through the trees one caught glimpses of the red coats of the Grenadier’s Band which played at one end of the lawn, while at the other, the Queen’s Own Band rendered alternate airs. Large white marquees stood at one side of the grounds from which refreshments were served, and small tables were placed under the trees which overlooked a deep ravine, almost hidden in foliage. Pipe-Major Dunbar Hamilton, of the Ninety-first Highlanders, dressed in his kilts, his cheeks distended, his face aflame, marched up and down and down and up, skirling his bagpipes, heroically unconscious of the fact that he was the center of attraction for them all; his only rival being the Princess Patricia, in her simple, white muslin gown.

The members of the Conference met a great many charming people, including several Canadian dignitaries, and the afternoon passed all too quickly. But when they had written their names in the Visitors’ Book—which was equivalent to making a “party call”—and had had their pictures taken at the entrance gates, they reached the King Edward Hotel with a vague sense of having missed something which would have made

the party even more charming. Presently it dawned upon them. That carload of interesting newspaper men who had accompanied them to Toronto, where were they?

They learned the answer to this question during the journey back to Niagara. The newspaper correspondents had been riding about Toronto, entertaining each other, seeing all there was to see and learning all there was to learn about that city in particular and Canada in general; having the loveliest time—but not as guests of the Governor-General. For when they appeared at the great iron gates at Craigleigh, no arrangements, apparently, had been made for them, whereupon they turned blithely away and disposed of themselves as has been said.

And the best part of the story is yet to tell. Not one line, not a syllable about this unfortunate occurrence appeared in any American newspaper. The Canadian papers were full of it. They explained and apologized. The Governor-General, they said, lived in Ottawa. He gave the party in Toronto, for the convenience of his guests. His aide-de-camp, who issued the invitations, insisted that the local details were in the hands of a Toronto Committee, and the Committee, of course, blamed the aide-de-camp. It was, evidently, one of those accidents for which no one was specially to blame. It would not be referred to here, but for the light it throws on the sporting instincts of the American newspaper man.

On June twenty-ninth, 1914, the headlines of the newspapers announced the assassination, at Sarajevo, of the Archduke, Francis Ferdinand of Austria; but strangely enough, the tragedy attracted little attention. Far more space was given to the statement, which followed on July first, that—all questions between the United States and Huerta being settled—the Protocol had been signed, on June twenty-fourth, and the Conference had voted to take an indefinite recess.

The text of the Protocol was published in the newspapers. Only one paragraph will be quoted which read: "The Government of the United States of America will not, in any form whatsoever, claim a war-indemnity, or other international satisfaction." To most Americans this sounds so much a matter of course that it hardly deserves mention. But it was far otherwise in its effect upon the Mediators. They could not believe it was possible that the United States Government would ask no indemnity, no oil concessions, no money, nor lands—not even the Californian Peninsula—as a condition of the withdrawal of its forces from the occupied territory. It had only to ask, for Mexico was in no condition to refuse; the United States held the city of Vera Cruz and its troops were firmly entrenched on Mexican soil. The surprise of the Mediators at our action was only equalled by their gratification.

The South Americans, in common with many Europeans, and possibly some citizens of the

United States, had assumed that this was an opportunity to add valuable territory to our possessions, which our Government would not neglect. Indeed when Justice Lamar first came to Niagara, it was not unusual to hear the Mexican situation discussed as though it were merely a question of business interests. One heard frank annexationists talk of "natural boundaries," and say how much better off Mexico would be if she belonged to the United States. But even taking all these facts into consideration, one could hardly overestimate the reassuring effect on the South American Republics, of our Government's policy in waiving all the demands that it could so easily have enforced. A foundation was laid, thereby, for the good understanding which now exists between the two continents, where it did not exist before.

If the A. B. C. Conference did nothing else, it averted war between this country and Mexico; a war which might have proved more troublesome than was feared at the time. A danger passed is a danger forgotten; but the most casual glance at the newspapers for April, 1914, before the Mediation was decided on, shows that, but for the Conference, war would have been inevitable! No one wanted war with Mexico then—and if we could have looked ahead for three short months, we would have wanted it still less.

On the first day of July, 1914, the Minutes were signed, the Mediators gave a farewell dinner to

the Press, and on the following day the commissioners returned to Washington.

In 1916 the *Indianapolis News*, in a leading article, praised Justice Lamar's industry, fairness, and legal acumen and asserted that much of the success of the A. B. C. Conference was justly attributed to him because his personality, no less than his good judgment, had played a large part in harmonizing the differences brought before the Commission.

When one considers the delicacy of the situation, the many crises that occurred, and the almost endless differences that arose between the ambassadors and the emissaries of the Constitutionalists concerning their representation in the Conference, this was not undue praise.

## CHAPTER XV

### THE LAST TERM

IN the early days of the World War there were doubtless those who were honestly neutral; but Justice Lamar was not one of them. When Germany demanded a free passage for her armies through Belgium, his sense of justice was outraged, and from that moment he was uncompromisingly on the side of the Allies, and profoundly concerned for the success of their cause. His interest in the War was all absorbing. He thought and talked of little else. And when he was not greedily devouring newspapers, he was reviewing his Prussian history in an effort to understand the psychology of the German people and their Prussian rulers. There was no thought, at that time, in any one's mind, that the United States was at all concerned with the issue, but rather a feeling of gratitude to the founders of the country who had kept it free from European quarrels; and, on Justice Lamar's part, a great thankfulness that we were not ourselves at war with Mexico.

The summer brought him a further evidence of President Wilson's increasing friendship and confidence in the form of a letter from the Secretary of State. Mr. Bryan wrote to say that the Pres-

ident wished to appoint Justice Lamar as one of the delegates to the Pan-American Conference to be held in Santiago, Chile, the following October.

"For every reason," Lamar replied, "I want to go. I believe that this is the opportune time for welding together the interests of North and South America, to the mutual benefit of both countries, to the cementing of friendly relations, to the extension of the trade of the United States and to the material benefit of our people. I should count it a privilege to be numbered among those who shall assist in that great work. But I feel that my duties as a member of the Court make it impossible for me, during the early and important stages of the term, to be absent for the lengthy period which the voyage and the Conference would necessitate, and compel me, most reluctantly and regretfully, to forego the honor which the President so generously offers to bestow."

His letter to the President called for no reply, but Mr. Wilson wrote most cordially saying that this was what he had learned to expect from Justice Lamar "in generous feeling and in sense of public duty." He expressed his gratitude for the support given him by men who "think first of other things and not of themselves."

The latter part of August, 1914, the Lamars went to the White Sulphur Springs, where they found the Chief Justice and Mrs. White, as well

as a number of friends from Augusta. There were several army and navy men among the guests of the hotel, and public interest centered around their opinions as to the relative strength of the various forces engaged in the war. Justice Lamar was fairly well informed on this subject. Some weeks before, while he was on the New Jersey Coast, at Atlantic City, he had met General Garlington of the United States Army, who had been Military Attaché at several of the European embassies, charged with the duty of observing armies and their maneuvers. The General knew all about the comparative strength and training of the German and the French armies and their facilities for rapid mobilization, and Lamar, running true to form, had soon learned all that the General had to tell.

The eastern dailies took twenty-four hours to reach the Springs, and Lamar subscribed to one or two New York afternoon papers. There were daily bulletins posted at the hotel, but not contented with this, the Justice and some other gentlemen had the headlines of one of the New York papers wired to them, each morning; although they had to wait for the afternoon papers to explain the headlines! When the retreat from the Marne began it was no unusual thing for the Justice to wait up until after midnight to get the latest news.

The latter part of September Judge Lamar returned to Washington, before the beginning of

the October Term. He began the winter's work with less than his usual vigor. The anxious sessions at Niagara and the sense of responsibility for the outcome of the Mediation had told upon his strength. His work no longer came to him easily, and he could not forget it during his rare hours of recreation. The eagerness with which he habitually attacked any congenial work; the careful and painstaking methods that were characteristic of him, took on a new phase. He began to drive himself to the completion of his tasks. He was feverishly anxious to do the best that was humanly possible, to put all the strength that was in him into every line that he wrote. His friends understand now what lay behind this abnormal activity, and realize that the serious affection of the heart, which was gradually sapping his strength, and which brought his life to its untimely end, was responsible for the reckless expenditure of vital energy which characterized his actions.

But apart from his fatigue and his constant preoccupation with the war, his life in Washington was unusually pleasant during that fall and winter. He was beginning to feel more at home there; more identified with the interests of the city; and the fact that the city shared this feeling with regard to him was shown in more ways than one.

He was elected, in February, 1915, to the office of First Vice-President of the Washington Na-

tional Monument Society; a historic organization, as was shown by Mr. Charles C. Glover's letter, notifying him of his election. He wrote:

"It may interest you to know that the Society was founded with a limited membership in September, 1833, and that Mr. Chief Justice John Marshall was made its first President; and that upon his death he was succeeded, in 1836, by ex-President James Madison. In 1888, Mr. Justice William Strong, of your Court, was elected to succeed Mr. W. W. Corcoran, at a meeting presided over by the Society's first Vice-President, Senator John Sherman, of Ohio.

"Mr. Justice Brown was elected to succeed Justice Strong, on his death, and to the office of first Vice-President on the death of Senator Sherman. Since the death of ex-President Madison, the President of the United States, for the time being, has been ex-officio, President of the Society, and the Governors of the several States, vice-Presidents."

With the exception of the Vice-Presidents mentioned in this letter, the members of the Society lived in Washington, and included many of Justice Lamar's friends. He accepted the position with much pleasure. No one took a keener interest in the city than he did, and he was glad to be identified with its chief monument.

During the same spring he was asked to speak

at the laying of the cornerstone, by President Wilson and ex-President Taft, of the Red Cross building on Seventeenth Street. It was built by act of Congress, as a Memorial to the Women of the Civil War, and is dedicated, as the tablet reads: "To the Women of the North and the Women of the South, held in loving memory by a now united country,"—words that were prophetic of the united service of all the women of the land in the next few years. The Lamars continued to hear pleasant things about the address that he delivered, wherever they went for many weeks thereafter.

On the seventh of May, 1915, came the sinking of the *Lusitania* and President Wilson's first note to Germany.

"I can recall no instance in our history," Justice Lamar wrote him, "presenting so many elements of difficulty as that with which you have had to deal in connection with the recent acts of Germany on the high seas. But your message to the Imperial German Government has given perfect expression to the deep feeling of the American people. In dignity and firmness, in letter and in spirit, it reaches the height of the great occasion."

From this time a number of letters passed between the President and Justice Lamar. Their tone was always the same. On Lamar's side, there was a thorough comprehension of the difficulties that surrounded the President and a keen appreciation of the dignity and firmness with

which they were met. On the President's side there was unfailing gratitude for the support thus given him. He thanked Lamar "with all his heart," and expressed his appreciation of the approval "of one whose judgment I value as I do yours."

The season was wearing to a close and the end of the term approached. On the twenty-first of June, 1915, the Court adjourned for the summer. Justice Lamar sat on the Bench for the last time and delivered five opinions and one dissent. Mrs. Lamar's journal shows that she was in the audience from twelve until three o'clock, but it is ominous that no mention is made of the opinions, but only of the fact that he was very tired.

Immediately after the Court's adjournment Judge Lamar went to Atlantic City, where he spent a few days. He returned refreshed, and early in July the family went to the White Sulphur Springs, where their cottage in Tansus Row was ready and waiting for them. The weather was cool and the change was beneficial; but as his health began to improve, the Judge could not resist the temptation to pay a visit to Augusta, where he went on July the eleventh. He was cordially welcomed and delighted in meeting his friends. But it was very warm and the effort necessary to see a great many people in the limited time at his disposal, was a serious tax upon his strength, and he returned to the Springs very much exhausted.

"I have been quite a traveler," he wrote the Chief Justice in August, "since I last saw you,

though not as much as is implied in the clipping that someone sent me, stating that I had been to Hawaii, and returned by way of San Francisco. . . . When I got back here, I was surprised to find that the Virginia Bar Association was to meet at this hotel, although it is in West Virginia. I attended all the meetings, and barring one or two partisan references, the papers were quite good. The annual address was by Mr. Byrne, of New York, who discussed, very instructively, some questions of international law, suggested by the present war.

"The attendance was good, and, on every hand, the members of the Association expressed the keenest disappointment that you were not at the Springs this year. . . .

"The hotel is having a wonderful season. The manager told me this morning that they were entertaining just one hundred more than were here this day last year. Most of them are complete strangers to me, so that I find nothing like so many to talk to as I did last year. There is not that same absorbing interest in the War that there was then. The present retreat from Warsaw reminds me of the situation last year before the Battle of the Marne, and my gloom is even thicker now than it was then."

In spite of the gloom which this letter describes, it is pleasant to remember those August days. The White Sulphur had become a very homelike place to the Lamars. They returned to it with

pleasure each season. There were a number of interesting people at the Springs that summer whom Justice Lamar enjoyed meeting. Among them were General Luke Wright, who succeeded Mr. Taft in the Philippines and as Secretary of War, in 1918; Mr. and Mrs. Brooks Adams and Senator Depew with whom Justice Lamar had interesting conversations about the war. There were pleasant walks and drives through the beautiful country; there were friends from home, whom it was a pleasure to meet. The Lamars had with them a party of young men, their own two sons and two of their friends, Landon Thomas, Jr., from Augusta, and James Alexander, from Atlanta. Their table in the dining room, near one of the long windows which opened on the piazza of the "Old White," was a center of social life which interested him greatly.

Justice Lamar's interest in the World War never flagged. The walls of their little piazza were lined with war maps on which they anxiously followed the fortunes of the allied armies. There was a large one hanging near the entrance to the hotel office, and a bewildered looking man was discovered standing before it, one day: "I have found Minsk," he explained, "and Pinsk. But I can't locate Dvinsk."

There are other memories of those summer days. Mrs. Lamar recalls a picture of two figures—one an Associate Justice of the Supreme Court, and the other a small maiden of six—sitting together

on the hotel piazza; each in a high-backed rocking chair. It was not a perfect fit for the little girl, for her feet only reached a few inches beyond the edge of her seat. They were gravely but good-naturedly debating the question as to whether she was called Lucy. The Justice had begun the conversation by asking her name, and when she was overcome by a child's fit of shyness, and had hung her head in silence, he told her that he suspected it was Lucy. And he gave his reasons with as much seriousness as though he were delivering the opinion from the Bench.

It happened that her name was not so simple a matter. It was not a girl's name, at all, but a high sounding, family name, "like Rutledge or Ravenel," which made her responses even more difficult. But the Justice insisted that it must be Lucy. Whereupon, they argued the point quite dispassionately on both sides.

Not every one who loves children has the faculty that he had of engaging them in a sustained conversation in which the child is made to forget the difference in years and is adroitly led on to express itself naturally and without self consciousness. He had a rare gift for drawing people out. He soon discovered the topics in which they were interested and well informed, and he would learn from them all that they could teach. His eager interest acted as a stimulant to those with whom he talked. They were at their best with him and were often surprised at their own fluency.

But this, after all, was but the flickering of the candle in the socket. Early in September, sitting on the porch of his cottage, Justice Lamar suddenly found a difficulty in raising his left arm. At first it seemed to be nothing; he would not allow a physician to be called and after a few moments the weakness passed. But it returned, and when the Doctor was summoned, the family began to realize what it meant. The next day he dictated this letter to the Chief Justice:

“. . . I left Washington very much under the weather, and have been in the hands of the doctors all the summer. I did not write you, because I did not wish to worry you. But now that I am much worse, I prefer that you should hear from me, instead of from the papers, what my condition is.

“When I got here, the doctor found that for years, unknown to myself, I had been suffering from considerable enlargement of the heart. That, in connection with high blood pressure, made it necessary for me to take the baths. They seemed to benefit me very much, and to reduce the pressure. Yesterday I had what I thought was a stroke, but which he says was a clogging of some of the veins in the brain, which has resulted in a numbing, or partial paralysis of the left leg and arm.

“I am now in bed and suffering great inconvenience, but no acute pain. The doctor talks more

encouragingly than I feel, and says that he thinks I can be up and about within a week or two. I am not so sure as he seems to be; but inexpressibly mortified at what seems to me to be helpless—and I fear will be useless—days for the remainder of a short life. Of course the prime regret is the fear that my incapacity will put more work upon others who are already carrying tremendously heavy burdens. . . .

"I write with perfect frankness, because I feel that you should know the very worst, and should learn it from me, rather than from any one else. I have been silent as long as I have because I had the most encouraging reports from my doctors; and until this last incident, I myself expected to go back to Washington stronger than when I came, and as well fitted to work as ever before. . . ."

There is little to add to this letter. At the end of a month of anxiety, his family brought him back to Washington, where he was so happy at being again under his own roof, among the familiar surroundings and comforts of his own home, that his improvement was marked. Little by little, he recovered the use of his arm and limb; he was able to walk with a cane, and to take short rides. He was allowed to see his friends, and they came to him from far and near. It was the season, made so familiar and so welcome to Justice and Mrs. Lamar, during their stay in Washington,

when many travelers from their own section pass through Washington on their journey home for the winter. Hardly a day went by, but that some well-known, well-loved face was there to greet him.

Nor were these all. Many friends from all over the country stopped by to see him; Mr. Taft, Mr. Lehmann, Mr. Wickersham, Mr. Nagel—there is not space for all the list. Every day when he was well enough to see anyone, some member of the Court was there, and many others of the friends he had made in Washington. At times the library or the living room, where he sat by a wood fire, would be the scene of conversations that were worth remembering.

There was no limit to the kindnesses shown him. A friendly note from President Wilson, with a box of flowers from the White House, followed him back from the White Sulphur Springs, and was the precursor of many flowers from the same hand.

The President wrote that he was sending him a message of affectionate interest. He had been deeply distressed to learn that Mr. Lamar did not improve more rapidly. He wanted him to know with what genuine sympathy he had followed his illness, and that he wished, with all his heart, that there was something he could do to cheer his friend on the way to recovery.

It was not long after his return to Washington before Lamar was able to dictate letters, a privi-

lege which he greatly prized. Reading these letters now, one sees in them messages of farewell, thinly veiled. But his family did not realize this at the time. They were full of faith in his ultimate recovery. It was so easy to attribute his attitude to the depression which, the doctor told them, was characteristic of his physical condition and as little under his control as his rapid pulse or his quickened respiration.

“Lying quietly in bed,” he wrote to a friend, “is a great stimulant to the memory,” and his thoughts went back to his former home and friends.

“I have often heard,” he wrote to another, “that nothing was so calculated to bring up an association of ideas as an odour, and the truth of this was verified when your box of chrysanthemums was opened. The pungent, aromatic smell instantly brought back my home on the Hill, where, as you know, for three or four years, Mrs. Lamar raised chrysanthemums in her sunken garden, and in a little plot near the back steps. I had charge of three or four plants, and as I went to and from the office, I would stop and disbud them. I became very much interested in watching the rapid growth of the selected buds, and when, at last, they opened out, full and large, I had a sort of proprietary pride in their bigness and beauty. The odour on the hands fixed itself in my memory and when I handled those you sent, there was a surge of recollection that brought back, with strange vividness, a picture of the

house and the yard, the hedges and the crêpe myrtles; particularly one at the right of the front steps, which, I think, was the most beautiful tree of the sort I have ever seen. . . .”

One clear, cold day in December, when he was suffering from what the Doctor called “air hunger,”—a phrase that seemed to him very descriptive, and one that he often used—Mrs. Lamar took him, in her little car to the foot of the Monument and they rode around it again and again; stopping to look at the view of the Speedway and the River, with Georgetown on their right and the heights of Arlington on their left, and to drink in the grateful air, electric with ozone.

And suddenly, at the end of the year, he grew worse, and just as they had begun to hope that he would soon resume his normal life—he was gone.

He died, in his home in Washington, on the evening of Sunday, January second, 1916, and on Tuesday, the fourth, they took him home to Augusta, where, on the following day, he was buried in the old cemetery on the Sand Hills in a spot he himself had chosen, at the place and among the people that he loved.

Like a river when the flood gates are opened, messages and letters came rushing in; messages of sorrow and sympathy, of admiration and respect. Many of them were from well known public men giving their estimate of his character and attainments. One or two have been chosen which are

typical of them all. From President Wilson and former President Taft came these telegrams:

“My heart-felt sympathy goes out to you in your tragical loss, which the whole country has reason to mourn. It has lost an able and noble servant. I have lost in him one of my most loved friends.

“WOODROW WILSON.”

“Mrs. Taft and I extend to you from our hearts the deepest sympathy in your great sorrow. I mourn for the Country and the Supreme Court the loss of a great Judge who united with his eminent ability and learning the fine edge of high character, judicial quality and purity of purpose. The success with which he achieved his high ideals is a real basis of optimism.

“WILLIAM H. TAFT.”

The following letter came from Viscount Bryce, Ex-Ambassador from Great Britain to the United States:

HINDEAP, FOREST ROW, SUSSEX,  
January 31, 1916.

“*My dear Mrs. Lamar:*

“We have been deeply grieved to hear of the terrible bereavement which has come upon you and desire to express to you our sincere sympathy. Your husband was one of the friends whom we

most valued in Washington, and I recall with a pleasure now darkened by sadness the many conversations we had together and all that I learnt from him. He seemed to me to have an eminently just and wide mind, always seeking for the truth in a spirit of perfect candour, and penetrating deep to the true reasons of political principles and legal rules. It was a privilege to know him, and I deeply mourn for your Country as well as yourself and those others who were nearest to him, his withdrawal from the high post which he adorned.

“My wife joins with me in deep sympathy, and in the hope that strength may be given you to bear this sorrow.

“Believe me,

“Very sincerely yours,

“JAMES BRYCE.”

The Honorable George W. Wickersham, Ex-Attorney General of the United States, wrote:

40 WALL STREET, NEW YORK,  
January 3, 1916.

“*My dear Mrs. Lamar:*

“. . . I had for your husband a profound admiration, a high esteem and a warm friendship. I had fondly hoped for him a great career on the Supreme Bench. God, in his infinite wisdom decreed otherwise. I am happy in the recollection of the hour I spent with him and you less than a

month ago. But I love better to think of him before his health was impaired, when he was the embodiment of manly beauty, intelligence and courtesy. I cannot think of him as gone from us. It was too soon. There was so much work to be done which he was peculiarly fitted to do! Our hearts are with you in this sorrow. May God give you strength to bear up under it. The memory of what your husband was—a man loving justice, doing mercy and walking uprightly before God and man—must sustain you.

“Faithfully yours,

“GEO. W. WICKERSHAM.”

Let us close the story of his life with these tributes from two of his friends:

From Major Joseph B. Cumming:

“. . . For as we recall the man, his intellect, his attainments, his high standards, his lofty character, how he wrought in his profession and in his high office, how true he was to civic duty, how delightful he was in social life, how single and open hearted, how modest and yet how firm for principle, how free from parade and ostentation, from ‘envy and all uncharitableness,’—when we apply to him, in all its comprehensiveness, the good old phrase, ‘walk and conversation,’ and note what they were, the picture is so impressive, that, though admonished as we are that perfection does

not co-exist with human nature, we will not suppress the language of unreserved admiration. . . .”

From Edward Douglas White, Chief Justice of the United States:

“O true American and devoted public servant, O cherished friend and faithful comrade, O sweet and noble soul, may it be vouchsafed that the results of your work may endure and fructify for the preservation of the rights of mankind, and may there be given to us, who remain, wiping from our eyes the mists begotten by your loss, to see that through the mercy of the inscrutable Providence of God you have been called to rest and to your exceeding reward.”



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